

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<i>In re Navy Chaplaincy, aka</i>)	
)	
Navy Non-liturgical Chaplains,)	
Plaintiffs,)	
)	
v.)	CASE NO. 07-mc-269 (GK)
THE UNITED STATES NAVY)	
Washington, D.C. 20530)	
and)	
)	
THE SECRETARY OF THE NAVY)	
Room 4E686 - The Pentagon)	
Washington, D.C. 20350-1000)	
Defendants.)	
)	

**IN RE NAVY CHAPLAINCY
CONSOLIDATED COMPLAINT**

This Complaint consolidates, in accord with the District Court’s July 25, 2012, Case Management Order #1, the claims of three previously separate cases filed in the District Court by three groups of Non-liturgical Navy chaplain Plaintiffs at different times, including two chaplain endorsing agencies in their personal and representative capacities. Those now closed cases are: *Chaplaincy of Full Gospel Churches v. [the named Secretary of the Navy]*, 99cv1945; *Adair v. [the named Secretary of Navy]*, 00cv566; and *Gibson v. U.S. Navy*, 06cv1696 (GK).

The Court previously consolidated all three cases into *In re Navy Chaplaincy*, 07mc269 (GK), and this caption keeps that case identity. To facilitate review and reference to the facts, Counts, claims, and relief because of the Consolidated Complaint’s length, an Index is provided, followed by the listing of the organizational and 65 chaplain plaintiffs and the body of the Complaint.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<i>In re Navy Chaplaincy, aka</i>)	
)	
Navy Non-liturgical Chaplains, ¹ aka)	Case No. 07-mc-269 (GK)
)	
The Chaplaincy of Full Gospel Churches,)	
)	
and)	
)	
The Associated Gospel Churches)	
)	
and)	
)	
Robert H. Adair (Adair))	
and)	
)	
Rich L. Arnold (Gibson))	
and)	
)	
Ray Allen Bailey (Gibson))	
and)	
)	
Michael Belt, (Adair))	
and)	
)	
William C. Blair (Adair))	
and)	
)	
Rick P. Bradley (Gibson))	
and)	
)	
George Philip Byrum,(Gibson))	
and)	
)	
Andrew Calhoun (Gibson))	
and)	
)	
Martha Carson (CFGC))	
and)	
)	

1 The 65 individual chaplain plaintiffs in the three previously separate cases are identified herein with their original case.

Greg DeMarco (Adair))
and)
Tim Demy (Gibson))
and)
Patrick T. Doney (Gibson))
and)
Joseph Dufour (Gibson))
and)
Floyd C. Ellison (Gibson))
and)
Larry Farrell (Adair))
and)
Alan Garner(Gibson))
and)
Dave Gibson (Gibson))
and)
John Gordy, (Gibson))
and)
Richard F. Hamme (Adair))
and)
Furniss Harkness (Adair))
and)
William Hatch (Gibson))
and)
Gary Heinke (Gibson))
and)
Robert L. Hendricks (Gibson))
and)
Frank Johnson (Gibson))
and)

Mark R. Johnston,(CFGC))
and)
Laurence W. Jones (Gibson))
and)
Samuel D. Kirk (Gibson))
and)
Klon Kitchen (CFGC))
and)
Frank S. Klapach (Gibson))
and)
Tom Klappert (Gibson))
and)
Jan C. Kohlmann (Gibson))
and)
Allen L. Lancaster (Gibson))
and)
Michael Lavelle (Adair))
and)
George W. Linzey (Adair))
and)
James Looby (Gibson))
and)
Manuel Mak (Gibson))
and)
Walker, Jr. Marsh (Gibson))
and)
Denise Y. Merritt (CFGC))
and)
David Mitchell (Gibson))
and)

Jairo Moreno (Gibson))
and)
Timothy D. Nall, (Adair))
and)
Dan Nichols (Gibson))
and)
Rene` Porter-Stewart (Gibson))
and)
James V. Prince (Gibson))
and)
Duane Purser (CFGC))
and)
Rafael J. Quiles (Adair))
and)
Javier Roman (Gibson))
and)
Daniel E. Roysden (CFGC))
and)
Thomas Rush (Adair))
and)
Lloyd Scott (Gibson))
and)
Mary Helen Spalding (CFGC))
and)
Gary Stewart (Gibson))
and)
Lyle Swanson (Adair)
and)
Fred A., Jr. Thompson (Gibson))
and)

Glenn Thyron (Gibson))
 and)
 Armando Torralva (Gibson))
 and)
 Thomas Daniel Tostenson (Gibson)
 and)
 James Twamley (Gibson))
 and)
 Thomas R. Watson (Gibson))
 and)
 James M. Weibling (Adair))
 and)
 David S. Wilder (Adair))
 and)
 Barby Wilson (CFGC))
 and)
 Wilson W. Wineman (Gibson))
 and)
 Michael A. Wright(Adair))
 and)
 Chris Xenakis (Gibson))
 Plaintiffs,)
 v.)
 THE SECRETARY OF THE NAVY)
 Room 4E686 - The Pentagon)
 Washington, D.C. 20350-1000)
 and)
 T)

CASE NO. 07-mc-269 (GK)

THE UNITED STATES NAVY)
Washington, D.C. 20530)
)
Defendants.)
_____)

IN RE NAVY CHAPLAINCY
CONSOLIDATED COMPLAINT

I. INTRODUCTION

1. The Case and the Complaint.

a. This Complaint consolidates, in accord with the District Court’s July 25, 2012, Case Management Order #1, the claims of three previously separate cases filed in the District Court by three groups of Non-liturgical Navy chaplain plaintiffs at different times and two chaplain endorsing agencies in their personal and representative capacities. The Court previously consolidated all three cases into *In re Navy Chaplaincy*, 07mc269 (GK). Those now closed cases are: *Chaplaincy of Full Gospel Churches v. [the named Secretary of the Navy]*, 99cv1945; *Adair v. [the named Secretary of Navy]*, 00cv566; and *Gibson v. U.S. Navy*, 06cv1696 (GK). The index provides a guide to its claims, facts and relief.

b. This is a federal class action by Non-liturgical Navy chaplains challenging religious preferences and discrimination in the U.S. Navy Chaplains Corps (the “CHC”) in its accession, promotion, assignment, retention and separation systems and decision making processes in violation of the First and Fifth Amendments and the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000-bb, *et seq*, and 5 U.S.C. § 702. This includes but is not limited to:

- (i) the establishment of a denominational hierarchy system;

(ii) the unconstitutional composition of CHC chaplain selection boards and their discriminatory practices;

(iii) the unconstitutional delegation to chaplain board members (denominational representatives) on statutory and non-statutory or administrative boards of discretionary civic authority to award, deny or terminate government benefits for other denominational representatives without guarantees the power is used only for secular, neutral and non-ideological purposes;

(iv) the establishment of forbidden denominational preferences;

(v) the establishment of arbitrary and illegal religious goals/quotas for Navy chaplain accessions, promotions and career opportunities;

(vi) the establishment of a preferred religious tradition and a religious patronage system in the CHC;

(vii) the practice of having the Chief of Chaplains (the “Chief”) or his Deputy serve as president of chaplain selection boards; and

(viii) creation of a pervasive climate of bias, animosity and deceit toward plaintiffs and members of the class.

c. This complaint contains the claims of two organizational plaintiffs, the Chaplaincy of Full Gospel Churches (“CFGC”) and the Associated Gospel Churches (“AGC”) on behalf of their individual members, applicants, and themselves as explained in 3.b below. Claims unique to one or both of these two chaplain endorsing agency plaintiffs are identified separately herein.

d. Plaintiffs raise “as applied” constitutional challenges to:

(i) 10 U.S.C. § 612 which requires selection boards contain at least one member

of the category under consideration, here denominational representatives, because the Navy's selection board procedures allow and facilitate denominational preferences and prejudice to influence the board decisions; and

(ii) 10 U.S.C. § 613(a) which bars discovery of promotion board proceedings, thereby facilitating and concealing violations of the First and Fifth Amendments' and RFRA Guarantees.

e. The issues in this litigation involve legal and constitutional questions uniquely suited for judicial review and resolution, do not involve or require unique military expertise or judgment, do not involve judicial interference with military operations, and do not require exhaustion of administrative remedies as the issues arise from legal and constitutional challenges to Navy policies and/or practices under 10 U.S.C. §§ 628(i) and, 1558(g).

f. The defendants' voluntary cessation or modification of some of the policies and/or practices plaintiffs challenge herein does not moot plaintiffs' claims; the defendants have not shown there is no probability of reinstating those policies and/or practices.

g. This Consolidated Complaint provides great detail and numerous example supporting plaintiffs' claims reflecting the evidence accumulated in the over twelve years of litigation. The examples cited are examples only to provide specific notice of the type of harms challenged and do not limit or restrict other harms or damages that may be later claimed or discovered.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1346; 10 U.S.C. §§ 628(i) and 1558(g); U.S.C. § 702 and 42 U.S.C. § 2000-bb. A declaration of the rights of these and

other Navy Non-liturgical chaplains and the constitutionality of 10 U.S.C. §§ 612 and 613(a) as applied to chaplain promotion boards and various Navy and CHC practices or policies is sought pursuant to 28 U.S.C. §§ 2201 and 2202. Venue is appropriate under 28 U.S.C. § 1391(e) since the defendants are a federal agency and have offices and facilities located in Washington, D.C.

III. PARTIES

A. Plaintiffs

3. Organizational Plaintiffs.

a. Plaintiff CFGC is a Department of Defense (“DOD”) recognized endorsing agency² for military chaplains of the Christian Charismatic tradition (hereafter “Charismatic”). It is incorporated in Texas and has no publicly traded stock.

(i) CFGC brings this suit on behalf of itself and as a representative of all its Navy chaplains, both named and unnamed herein, past and present CFGC and charismatic Christian Navy personnel, its chaplain candidates, and the membership of the more than 60,000 churches and fellowships represented by CFGC (hereafter collectively the “CFGC Parties”). When CFGC filed suit in 1999, these churches had an established membership of over six and a half million. Affidavit of Rev. Dr. Jim Ammerman, CFGC Director (“Ammerman”),³ p. 5, ¶ 21 (Exhibit 1); *see also* 1999 Yearbook of American and Canadian Churches, p. 24 (hereafter “1999 Yearbook”) (describes CFGC). CFGC is

² “Endorsement. The internal process that Religious Organizations use when designating RMPs [Religious Ministry Professionals-*see* ¶ E2.1.9] to represent their Religious Organizations to the Military Departments and confirm the ability of their RMPs to conduct religious observances or ceremonies in a military context.” DOD Instruction (DODI) 1304.28, ¶ E2.1.7 .

³ Rev. Dr. Ammerman died in May 2010 but his Affidavit and the details of its testimony are preserved in his deposition. His affidavit is used herein for simplicity and continuity with CFGC’s original Complaint.

located in Duncanville, Texas.

(ii) The individual named CFGC plaintiff Navy chaplains identified in Attachments A and B were unjustly injured by the Defendants' challenged policies and prejudice toward CFGC and other illegal conduct.

(iii) CFGC challenges Navy and CHC policies and procedures which have frustrated its ability to fulfill the Department of Defense's (DOD) objectives, originally stated in 32 C.F.R. § 65.3 but now provided in DOD Directive (DOD D) 1304.19, ¶ 4.1⁴, to allow and facilitate the First Amendment right of charismatic Navy personnel to freely practice their religion by providing qualified charismatic chaplains. The challenged policies include but are not limited to: (a) until this and other chaplain lawsuits were filed, institutionalized denominational and/or faith group cluster accession and recruiting goals, objectives or quotas unrelated to the Navy's free exercise needs, rewarding some religious traditions while penalizing CFGC; (b) institutionalized unlawful denominational prejudice in chaplain accession, promotion, retention and career opportunities against CFGC chaplains and those of other non-preferred religious groups based on their religious beliefs, practices and speech; (c) an established preferred religious hierarchy and/or religious tradition within the CHC; (d) condoning and supporting religious animosity and hostility to CFGC and military members from CFGC member churches; (e) denial of religious free exercise and free speech rights of CFGC chaplains and Navy personnel; (f) impermissibly burdening the religious exercise of CFGC chaplains and

⁴ "It is DOD policy that the Chaplaincies of the Military Departments: are established to advise and assist commanders in the discharge of their responsibilities to provide for the free exercise of religion in the context of military service as guaranteed by the Constitution, to assist commanders and managing Religious Affairs. DODD 1304.19, ¶ 4.1

Navy personnel; (g) denying CFGC chaplains fair consideration in accessions, promotions and career opportunities in violation of the Fifth Amendment and DOD and Navy Equal Opportunity policies; (h) vetoing a proposed DOD faith group identification system that would have allowed charismatic and Pentecostal sailors and marines to identify them selves as associated with non-denominational churches and thereby allow their numbers to be counted in determining the faith group composition of the Navy; and (i) violating statutes and Navy regulations addressing equal opportunity, promotion procedures, chaplain utilization and freedom of worship. The defendants' prejudice and challenged policies interfere with and invade CFGC's organizational objectives and its protected and legitimate interests.

(iv) Each of the CFGC Parties has standing to sue in their own right. The interests which CFGC seeks to protect are germane to its purposes, Ammerman, at 9, ¶ 37 (**Exhibit 1**), and neither its claims nor the relief requested require the participation of individual CFGC Navy chaplains, Navy members of CFGC's religious tradition or members of CFGC's related churches.

(v) Analysis of Navy accessions from 1985-2005 shows CFGC's Navy chaplain applicant approval rates are statistically significantly below that of Catholic and Liturgical Protestant denominations and many Non-liturgical denominations/faith groups. CFGC believes its low approval rate is a reflection of the CHC's bias towards evangelical endorsers, evangelical churches and the individual chaplains endorsed by CFGC. The high rejection rate has injured CFGC financially and in its reputation and also mirrors the low promotion rates for their Navy chaplains.

(vi) CFGC endorsed 32 Navy chaplains from 1984-1999 when CFGC filed

suit, but only 7 reached LCDR and none reached CDR. The normal promotion rate for these ranks is 80% to LCDR and 70% to CDR.

(vii) CFGC receives financial support from its chaplains; rejection results in a loss of CFGC's resources expended in recruiting and processing applicants and requires additional expenditure of resources to recruit new candidates. The defendants' prejudice interferes with and invades CFGC's protected and legitimate interests.

b. The Associated Gospel Churches ("AGC") is a fellowship of non-denominational Christian, evangelical churches which has endorsed chaplains to the military services since 1943. It is incorporated in Pennsylvania but has no publically traded stock. Its offices are located at 209 Pine Knoll Drive, Suite B, Greenville, South Carolina.

(i) AGC brings suit on behalf of itself, its chaplain applicants and its Navy chaplains. Analysis of Navy accessions from 1985-2005 shows AGC's Navy chaplain applicant approval rates are statistically significantly below that of Catholic and Liturgical Protestant denominations and many Non-liturgical denominations/faith groups. AGC believes its low accession approval rate, which statistically correlates with AGC's low promotion rate, is a reflection of the CHC's bias towards evangelical endorsers, evangelical churches and the individual chaplains endorsed by AGC. The high rejection rate and low promotion rate has injured AGC financially and in its reputation. The stories of AGC plaintiff chaplains illustrate the Navy's prejudice toward AGC's beliefs.

(ii) AGC has been forced to expend funds and effort attempting to protect its chaplains and resolve disputes between its chaplains and Liturgical command chaplains, *e.g.*, a trip to Naples to assist CH Torralva. AGC receives financial support from its chaplains; rejection results in a loss of AGC's resources expended in recruiting and

processing applicants and requires additional expenditure of resources to recruit new candidates. The defendants' prejudice interferes with and invades AGC's protected and legitimate interests.

c. Both CFGC and AGC specifically challenge the Navy's (1) chaplain promotion system and procedures and (2) the CARE board system with its (i) use of chaplains as board members without accountability or objective standards, (ii) complete lack of objective criteria, (iii) lack of constitutional controls to prevent denominational or theological bias as factors in CARE board decisions, and (iv) the CHC's ability to set arbitrary accession and/or recruiting goals by faith group or denomination which are not based on recognized or projected free exercise needs.

4. Individual Plaintiffs. The sixty-five individual chaplain plaintiffs in the three consolidated cases are listed alphabetically (with original case identified) and their individual stories and harms in Addendum A; they are listed by original case in Addendum B.

C. The Defendants

5. The Naval Defendants.

a. The United States Navy (the "Navy") is a military department of the U.S. Armed Forces created by an Act of Congress. 10 U.S.C. § 5011 *et seq.* The Navy is organized into several branches or categories, *i.e.*, subordinate groupings of individuals possessing similar qualifications or skills. One of these branches is the Navy Chaplain Corps, 10 U.S.C. § 5142, whose members are denominational representatives commissioned as officers because they possess specialized education, training and experience necessary to meet the free exercise needs of Department of Navy ("DON") military personnel and their families. *See* DOD Instruction ("DODI") 1304.28 and Secretary of Navy Instruction

(“SECNAVINST”) 1730.7.C (defining chaplains as religious ministry professionals or “RMPs” endorsed by religious organizations to represent the religious organization to the military). *See* ¶ 21, *infra*. Its headquarters is in Washington D.C.

b. The Secretary of the Navy (the “Secretary”) is sued only in his official capacity, as civilian head of the Navy, the co-defendant organization. His office is in the Department of Navy, headquartered in Washington, D.C.

IV. DEFINITIONS

6. The Navy divides most of its Christian personnel and chaplains into three general categories which it calls faith group clusters or categories (FGCs): Catholic, Liturgical Protestant, and Non-liturgical.⁵ These are terms commonly used by Navy chaplains and the last two terms have particular significance to this case and its issues. To assist the Court in understanding these terms, the following general definitions are provided:

a. At the time most of the events transpired which form the basis for this action, the category “Catholic” referred to only those chaplains of the Roman Catholic denomination. The CHC places Catholic-like denominations which identify themselves as Catholic in the Special Worship category;

b. Navy chaplains use “Liturgical Protestant” to collectively describe those Christian denominations which (1) use a set liturgy or order of worship⁶ in their services, (2)

⁵ The Navy uses the term “Special Worship” to categorize and denote a small number of Christian and non-Christian faith groups which have unique or special needs for their worship and religious practices. This includes, Jewish, Orthodox, Seventh Day Adventist, Christian Science, Latter Day Saints (Mormons), Muslims, Hindu and Unitarian who comprise about 2-3% of DON and 5% of CHC.

⁶ Almost every church has some “order” to its worship, but for these Protestant denominations there is no worship service without the prescribed liturgy. There may be other

baptize infants, (3) whose clergy wear special religious apparel, (4) follow a liturgical calendar with specific scriptural readings by date for their services, and (5) recognize “sacraments.” This primarily includes those traditions or denominations that began during the Protestant Reformation and retained an established liturgy in their worship services such as the Lutheran, Reformed and Episcopal denominations, and the denominations which later evolved from them, *e.g.*, Presbyterian and Methodist. Navy chaplains sometimes refer to these liturgical denominations as “baby baptizers” since infant baptism is a common feature of these liturgical denominations. They are also referred to as “high church” or “main line churches.” As used herein, “Liturgical Protestant” will mean chaplains of the Lutheran, Episcopal, Methodist, Methodist Episcopal, United Church of Christ, Congregational, Reformed and Presbyterian denominations⁷; the term “Liturgical” without further description will refer to both Catholic and Liturgical Protestants who share a common liturgical history and baptize infants.

c. “Non-liturgical” refers to those Christian denominations or faith groups without a formal liturgy or order in their worship service. In general, they baptize only adults or children who have reached the age of reason, their clergy do not usually wear vestments

Liturgical Protestant denominations, but the ones identified here commonly recognized as such by the Navy, are the largest and most well known.

⁷ Although the Orthodox denominations met all the characteristics for Liturgical Protestants, *i.e.*, a fixed liturgy, clergy wear vestments, follow a lectionary and baptize babies, the Navy has historically treated Orthodox churches, *e.g.*, Orthodox Church in America, Greek Orthodox, as Special Worship. This complaint places the Orthodox churches in the Special Worship category to minimize differences in categorizations and because the Navy treats them as Special Worship, not as Liturgical Protestant.

or special religious dress during services, and they emphasize preaching from the Bible in worship services. Some Navy chaplains refer to these faith groups as “low church.” Baptist, Evangelical, Bible Church, Pentecostal, Charismatic and Christian Churches/Disciples of Christ faith groups or churches fall into the Non-liturgical category. Although these faith groups see their tradition and beliefs arising from first century Christianity rather than the Protestant Reformation, the Navy often refers to these faith groups as “Non-liturgical Protestant.” Plaintiffs belong to this category and represent Baptist, Evangelical, Full Gospel and Bible churches, Pentecostal and other Non-liturgical faith groups.

Some plaintiffs belong to denominations that allow their clergy to wear vestments or allow individual churches to baptize infants. However, they emphasize Bible preaching rather than liturgy, and the Navy has treated them as Non-liturgicals.

The Navy’s categorization of “Non-liturgical” as a FGC implies a similarity of worship practices and theology among its many different faith groups. This is incorrect because many of the Non-liturgical faith groups have sharp and serious differences in theology and reject the beliefs and worship practices of others within this FGC, *e.g.*, some Non-liturgical faith groups are hostile to charismatic or pentecostal worship practices and beliefs. This complaint challenges this “one-size-fits-all” approach and practice because it ignores differences and limitations, masks discrimination and allows the Navy to ignore its constitutional responsibility to provide for the free exercise of all faith groups.

d. Other Definitions/Abbreviations:

Billet - an authorized position for Naval personnel at a specific location or unit

CHC - Navy Chaplain Corps

FOS - Failure of Selection - being considered for promotion but not selected.

LT - Lieutenant

LCDR - Lieutenant Commander

CDR - Commander

CAPT - Captain

RADM - Rear Admiral

Career Grades - the ranks (pay grades) of LCDR (O-4), CDR (O-5) and CAPT (O-6)

whose active duty numbers are controlled by Congress.

DON - Department of Navy (includes the Navy and the Marines)

NIG - Navy Inspector General

DODIG - Department of Defense Inspector General

Precept - the Secretary of Navy's instructions to Navy selection boards

SER - selective early retirement - a statutory procedure to reduce officer strengths

allowing the Secretary to convene boards to select officers for involuntary

retirement who have the necessary time in service to qualify for retirement

V. CLASS ACTION ALLEGATIONS

7. Plaintiffs bring this action on their own behalf and as a class action as representative parties on behalf of all members of the class under the provisions of Federal Rules of Civil Procedure 23(a) and 23(b) for declaratory and injunctive relief, and relief incident to and subordinate to such relief, including costs and attorney fees. A class action is appropriate because, as shown below: (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law and fact common to the class, (c) the claims of the plaintiffs are typical of the claims of the class, and (d) the representative parties will fairly and

adequately protect the interests of the class.

8. Definition of the Class. The class represented by plaintiffs in this action, and of which plaintiffs are themselves members, consists of present and former Non-liturgical Navy chaplains, active duty and Reserve, who served in the Navy when the Navy began placing two Catholic chaplains as selection board members on every career grade chaplain selection or promotion board (the “2RC Policy”), in 1976,⁸ to the present. It includes those Non-liturgical chaplains whose active duty and/or Reserve careers have been terminated or otherwise adversely affected by the Navy’s and the CHC’s unlawful bias and prejudice against Non-liturgical chaplains, including the Navy’s reserving selection board memberships solely for Catholics from 1976 to 2002, its use of illegal denominational goals/quotas in promotion and retention decisions, and the other continuing violations of the Constitution, statues and regulations as described herein. It also includes those members of the class who have not yet personally suffered career injury as a result of the practices and policies challenged here because manifestation of the injury has been delayed, *e.g.*, prejudiced by adverse fitness reports but the injury has not yet manifested itself, or may be subject to the defendants’ arbitrary religious discrimination or hostility now or in the future.

9. As a further explanation, the class includes those Non-liturgical chaplains who, because of the Navy’s illegal board composition, illegal denominational goals or quota system and/or denominational bias against their faith group, denomination or Non-liturgical tradition: (a) were

8 The 2RC Policy began in or before 1976 when RADM J. J. O’Connor, a Catholic, was Chief of Chaplains (July 1975 to June 1979). *See* list of Chief of Chaplains, Exhibit 2. Plaintiffs reserve the right to further amend their Complaint if discovery shows the 2RC Policy actually began earlier. The 2 RC Policy ended in 1986 after Navy CH LT Ronald Wilkins successfully challenged the policy by obtaining an injunction enjoining his discharge for FOS, *Wilkins v. Lehman*, 85-cv3031 slip op. (S.D.Cal. 1986) (Exhibit 3).

FOS while on active duty or in the Reserve and who are still on active duty or in the Reserve, who left the Navy voluntarily, or were involuntarily separated from the Navy based on their FOS; (b) were FOS while on active duty but were or are in the Reserves; (c) were forced to retire as the result of SER boards or under the Temporary Early Retirement Act (TERA); (d) may suffer prejudice as active duty Non-liturgical chaplains due to the Navy's policies challenged herein unless the Navy is restrained from continuing those actions and policies; (e) saw or experienced the Navy's Non-liturgical bias and left active duty rather than endure that bias and prejudice, including those who retired early under TERA; (f) suffered adverse fitness reports (i) because of religious and/or denominational prejudice or (ii) they insisted on practicing the tenets or traditions of their Non-liturgical faith which the CHC hierarchy disapproved; (g) were not continued on active duty past their initial tour as a result of active duty continuation or Chaplain Accession and Recall Evaluation ("CARE") boards or similar procedures; and (h) were subject to the same bias in the Reserve promotion system and/or assignment of pay billets. The preceding examples are representative illustrations only and do not include all the examples of prejudice or harm caused by the Navy's illegal prejudicial conduct and bias.

10. The exact number of the class identified above is not known, but it is estimated that there are at least 1200 members.⁹ The class is so numerous that joinder of individual members in this action is impractical.

11. There are common questions of law and fact involved in this action that affect the rights of each member of the class and the relief sought is common to the entire class, namely:

a. A long and continuing pattern of violations of the First and Fifth Amendments

⁹ Plaintiffs conservatively estimate that approximately 1200 Non-liturgical chaplains were on active duty - including Reservists brings the potential class to 1400-1600. Defendants possess the necessary records and information to identify and quantify the class.

and RFRA including:

(i) a chaplain promotion and selection board system that:

(a) reserved at least one board seat for a Catholic chaplain from at least FY77-02;

(b) used selection boards dominated by Liturgical chaplain board members personally selected or approved by the Chief of Chaplains (the “Chief”) or his Deputy to select other chaplains for promotion, retention and separation;

(c) use a small number of board members who vote in secret without accountability, allowing one member to ruin a chaplain’s career by voting zero;

(d) allow the Chief or his Deputy to act as board president;

(e) delegate civic power to award or deny government benefits to denominational representatives with no guarantees the power will be used for neutral, secular and non-ideological purposes;

(i) the establishment of arbitrary and discriminatory fGCs which facilitate and hide prejudice and illegal religious quotas for chaplain accessions, promotions, continuation on active duty and selective early retirement (“SER”);

(ii) the establishment of a preferred religious tradition with unconstitutional discrimination and hostility on religious grounds against Non-liturgical chaplains and Non-liturgical Navy personnel;

- (iii) the establishment of a religious patronage system and a culture of denominational favoritism and prejudice;
- (iv) the illegal use of the SER process to separate Non-liturgical chaplains based on their religious beliefs and speech;
- (v) the establishment of accession goals unrelated to the DON's free exercise needs; and
- (vi) the use of chaplain dominated selection and accession boards with no protections or constitutional guarantees religious or personal bias cannot influence the outcome.

b. The violation of Non-liturgical chaplains' First Amendment rights of non-Establishment, Free Speech, Free Exercise and Right to Petition.

c. The violation of Non-liturgical chaplains' Fifth Amendment right to equal treatment and opportunity and other statutes, including 42 U.S.C. § 1981, the RFRA, 42 U.S.C. § 2000bb, and Department of Defense and Navy regulations.

12. The claims of the plaintiffs, who are representatives of the class are typical of the class's claims in that the claims of all members of the class, including plaintiffs, depend on a showing of the acts and omissions of defendants giving rise to the right of Plaintiffs to the relief sought.

There is no conflict between any individual named plaintiff and other members of the class with respect to this action, or with respect to the claims for relief set forth in this complaint. The class has similar injuries flowing from the Navy's systematic and intentional religious prejudice.

13. The named plaintiffs are the representative parties for the class, and are able to, and will, fairly and adequately protect the interests of the class. The plaintiffs' identification in ¶ 3 show they adequately represent the various statuses of the class, *i.e.*, active, reserve, retired, separated.

The attorney for plaintiffs, Arthur A. Schulcz, Sr., will actively conduct and be responsible for Plaintiffs' case.

14. This class action is maintainable under Fed. Rule of Civil Procedure (the "Rules") 23(b) because it satisfies the prerequisites of Rule 23 (a) and the following conditions of Rule 23(b):

(1) the prosecution of separate actions by individual members of the class would create a risk of

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants, all of whom oppose the class, or

(B) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted and refused to act on grounds generally applicable to the class, as more specifically alleged below, on grounds which are generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole which this action seeks; or

(3) *** the questions of law and fact common to the members of the class predominate over any questions affecting individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

15. The findings required by Rule 23(b)(1) and (2) are supported by the fact there is a large class of Non-liturgical chaplains against whom the Navy has operated in a systematic discriminatory manner, violating the Constitution, the Navy's own regulations, and promotion and equal opportunity policies. The declaratory and injunctive relief sought will affect all persons who have experienced the alleged discrimination. The findings required by Rule 23(b)(3) are supported by fact that the constitutional and federal questions raised by plaintiffs dominate this action and apply to all members of the class. If plaintiffs are successful, any individual relief that is incidental to this action will be determined by statute and require little if any involvement by the Court. Additional considerations:

- a. The cost of pursuing individual relief would seem to preclude individual actions as evidenced by the almost complete lack of individual actions in this area.
- b. This is the fifth action challenging the Navy Chaplain Corps' policies and procedures. The first action, *Wilkins v. U.S.A.*, was brought by an individual chaplain in the U.S. District Court in San Diego, CA in July 1999. The second action, *Sturm v. Danzig*, was also brought in the U.S. District Court in San Diego in October 1999 by an active duty chaplain raising many of the same issues as in this case; it was dismissed as moot after CH Sturm was promoted to LCDR. The third action, *Chaplaincy of Full Gospel Churches v. Danzig* (now *Mabus*) ("CFGC"), was filed in this Court November 5, 1999. Chaplaincy of Full Gospel Churches ("CFGC"), a recognized DOD endorsing agency, brought suit on behalf of itself and as a representative of its active duty chaplains and Navy members of its faith group churches; eight CFGC chaplains joined as plaintiffs. *CFGC* raises many of the same issues here but is limited to CFGC endorsed Navy chaplains. The fourth action, *Adair v. Winter*, was filed in the District Court for the District of Columbia March 17, 2000. *See* ¶ 4 *supra*.
- c. There are no extraordinary difficulties in the management of this class action. There are no state law issues and this type of action is analogous to civil rights actions which are often resolved in a class action.
- d. The issues here are primarily constitutional and statutory which involve no exercise of military discretion or expertise.

VI. THE NAVY'S RELIGIOUS DEMOGRAPHICS

16. The DOD records religious preference data for the individual service members. A 7/8/98 Report by the Defense Manpower Data Center (hereafter "DMDC") attached at Exhibit 4,

provided a factual religious demographic background against which to measure plaintiffs' allegations and the reasonableness of the Navy's actions and policies.

a. Enlisted religious preference data is recorded at the time of enlistment on a block on the DD Form 4, Enlistment Form.

b. When the *CFGC* and *Adair* Complaints were filed in 1999 and 2000, only the Navy did not provide its officer religious preferences to DMDC. Given the availability of this data in the Navy Officer Master Files, the failure to provide this data to DMDC was a conscious decision on the part of the Navy. Plaintiffs believe this omission was deliberate to hide the large number of Catholic officers, especially at the higher ranks.

17. The DMDC data shows that, when *CFGC* and *Adair* were filed, the actual Navy membership of the Liturgical Protestant denominations at issue here represent about 8% of all DON active duty personnel, or about 11% of those who profess faith.¹⁰ Specifically, in 1998 those of various Methodist named or affiliated denominations, *i.e.*, those who have Methodist or Asbury in their name, represented approximately 3.78% (20,776) of all DON personnel (549,800); Presbyterian related denominations represented 1.05% (5,781); the various Lutheran denominations represent 2.90% (15,937); Episcopal and Reformed Episcopal represented 0.73% (4,039); Methodist Episcopal represented 0.2 % (402); Reformed churches represented 0.1% (288); Orthodox represented 0.1% (256); a Liturgical Protestant total of approximately 8.76%. In the February 2000 report, this total had decreased to 8.03%.

18. Catholics, a major liturgical denomination, represented 24.09% (132,429) of the *total DON personnel* in 1998 and 23.56% (125,892) in 2000. Of total DON personnel *identifying a faith*, Catholics represented about one-third, 32.85% in 1998 and 31.59% in February 2002.

¹⁰ About 1/3 of Department of Navy personnel identify no faith.

19. Identified Non-liturgical faith groups currently represent about 53% of the Navy religious population identifying a faith. The DON religious demographics based on the DMDC data for 1998-2001 and 2006 (when *Gibson* was filed) which includes DON officer preferences are shown at Exhibit 5.

VII. CHAPLAINS AS FAITH GROUP/DENOMINATIONAL REPRESENTATIVES

20. DODI 1304.28 implements the policies of DOD Directive (“DODD”) 1304.19 (“The Appointment of Chaplains for the Military Departments”) and defines chaplains as “religious ministry professionals” (RMPs): “an individual endorsed to represent a Religious Organization and to conduct its religious observances. An RMP is a fully qualified member of the clergy” *Id.*, ¶E2.1.9.

a. 1304.28 further defines “endorsement” as “the internal process religious organizations use when *designating RMPs to represent their religious organizations to the Military Departments*, confirming the ability of their RMPs to conduct religious observances or ceremonies in a military context.” *Id.* ¶E2.1.7 (emphasis added). *See also In re England*, 375 F.3d 1169, 1171 (D.C. Cir. 2004), *cert denied*, U.S. (2005) [citations omitted] (noting the “unique” role of chaplains “involving simultaneous service as clergy or a ‘professional representative’ of a particular denomination and as a commissioned officer.”).

b. In *Rigdon v. Perry*, 962 F.Supp. 150 (D.D.C. 1997), the executive director of the Armed Forces Chaplain Board submitted a declaration on behalf of the military defendants and DOD stating that chaplains were faith group representatives who remained accountable to their faith group community and who had “rank without command.”

21. DODD 1304.19, ¶4, “Policy,” states chaplaincies of the Military Departments “are established to advise and assist commanders in the discharge of their responsibilities to provide for the free exercise of religion ... to assist commanders in managing religious affairs (DOD Directive 1500.73) (E)) and to serve as the principal advisers to commanders for all issues regarding the impact of religion on military operations.” DOD’s definition of the chaplain’s role, “to advise” and “to assist”, shows DOD’s intent to preclude chaplains’ opportunities to exercise the sovereign’s authority in any significant way, avoiding the appearance of “fusion” between religion and the government.

22. The DOD’s 1987 “Study of Representation of Religious Faiths in the Armed Forces” (“DOD Study”) identified and analyzed tasks performed by military chaplains.

a. “Each service indicated that a substantial majority of a chaplain’s time is spent in tasks that are clearly religious in nature, such as conducting religious services, education, and pastoral counseling. The high percentage of time spent in these areas is to be expected, for *they are primary to the chaplain’s role as a cleric in the military.*” *Id.* at I-12 (emphasis added).

b. Considering whether “pastoral counseling” was secular or religious, DOD reported: “From the perspective of this study, pastoral counseling is considered a religious activity. Pastoral counseling centers on the spiritual dimension, whether it involves crisis intervention, dealing with situational maladjustments, the management of stress, or caring for the bereaved and the victims of trauma.” *Id.*

c. “Because of their roles as religious leaders, chaplains are sought after and become deeply involved in such programs as control of substance abuse, marriage enrichment, ethics and moral development, interpersonal relationships, and leadership.” *Id.* at I-13.

d. “The administrative tasks, while secular in nature, are primarily associated with the management of ministerial activities within the military system.” *Id.*

e. “In conclusion, the highest percentage of a chaplain’s time is devoted to specific religious activities, and even those activities not clearly identified as religious in nature, are related to the execution of pastoral ministry.” *Id.* at 14.

23. SECNAVINST 1730.7B, Subj: RELIGIOUS MINISTRY SUPPORT WITHIN THE DEPARTMENT OF THE NAVY, ¶ 4, specifically defined chaplains as “professional clergy of a certifying faith group who provide for the free exercise of religion for all members of the Department of the Navy” and defined their duties to “advise commands in matters of morale, morals, and spiritual well being.”

24. SECNAVINST 1730.7B, the operable regulation¹¹, clearly and severely limits those chaplain duties to “ministry support”, *i.e.*, “religious activities.”

In accordance with Article 1063 of [Navy Regulations, 1990], chaplains shall be detailed or permitted to perform *only such duties as are related to ministry support*. Chaplains shall not bear arms. Chaplains shall not be assigned collateral duties which violate the religious practices of the chaplain’s faith group, require services as director, solicitor, or treasurer of funds other than administrator of a Religious Offering Fund, serve on a court-martial or stand watches other than that of duty chaplain.

¶ 4 (emphasis added).

25. OPNAVINST 1730.1D of 06 May 2003, Subj: RELIGIOUS MINISTRY IN THE NAVY, page 9, section (11), parallels this restriction:

Chaplains shall not be assigned duties that violate noncombatant status or the religious practices of the chaplain’s religious organization, undermine privileged communication, as defined in reference (m), or involve the management of funds

11 On February 21, 2006 the Secretary issued 1730.7C which mirrored and did not change the relevant portions of 1730.7B, or its predecessor, 1730.7A. Congress directed the Navy withdraw 1730.7C because it limited chaplains’ religious speech when praying.

other than the ROF. Chaplains shall not be assigned to serve as a member of a court-martial or on a Family Advocacy Program Case Review Committee; coordinate or advocate in the Sexual Assault Victim Intervention program; act as treasurer, director, or solicitor of non-ROF funds; stand watches other than those of Duty Chaplain; or participate in any activity directly prohibited by approved international conventions defining the status of noncombatant.

26. 10 U.S.C. § 647 requires a chaplain be separated (as a chaplain) if he loses his endorsement. He may be retained if he obtains another endorsement.

VIII. OTHER STATUTES AFFECTING THIS LITIGATION

27. 10 U.S.C. § 612 requires selection boards to be composed of a minimum of five officers, one of whom should be from the category under selection.

28. A chaplain's second FOS before reaching the rank of CDR can result in involuntary separation from the Navy. 10 U.S.C. § 632.

IX. THE NAVY'S ILLEGAL POLICIES AND ACTIONS

COUNT 1

NAVY'S FAITH GROUP CATEGORY SYSTEM IS ARBITRARY, DISCRIMINATORY AND CONCEALS NAVY DENOMINATIONAL PREJUDICES IN VIOLATION OF THE FIRST AND FIFTH AMENDMENTS

29. The allegations of paragraphs 1 through 28 above are incorporated herein by reference as though pleaded in full.

30. In the late 1960s and 1970s, America's religious demographics began a large, steady and measurable shift away from Liturgical Protestant denominations to Non-liturgical churches, to which plaintiffs and the class belong. This trend continues today.

31. Until approximately mid-1986, the allocation of authorized Navy chaplains among the various faith groups was based on objective criteria, the relative percentage a faith group or denomination represented in the total American religious population as reported in sources such

as the annual Yearbook of American and Canadian Churches. For example, if there were 100 Navy chaplains authorized and Catholics made up 25% of the American religious population and Baptists made up 20%, the Navy would try to have 25 Catholic and 20 Baptist chaplains. *See* Exhibit 6- formula for computing accession goals; Affidavit of CAPT Larry Ellis, CHC, USN, Exhibit 7, ¶ 7.

32. Faced with shrinking Liturgical Protestant faith group membership, a growing Non-liturgical population and the implications for Navy chaplain faith group authorizations, the Navy abandoned its “objective” criteria (linking faith group membership with chaplain authorizations) around 1986 and replaced it with the amorphous, subjective “Thirds Policy” described below.

33. A 7/31/86 Memo from CAPT Muchow (later Chief of Chaplains) to the Chief, “Subj: Revised Fiscal Year 87 Accession Plan” (Exhibit 8), explained and implemented the “Thirds Policy.” It divided chaplain end-strength allocations among three religious groupings made up of faith group clusters or categories (“FGC”): Liturgical Protestant faith groups received 35%, Non-liturgical faith groups received 35%, and “Others” constituted the remaining 30%, of which 25% were to be Catholic. In other words, the CHC reserved 35% of Navy chaplain promotions, retentions on active duty and accessions for Liturgical Protestant chaplains, a FGC that represented less than 12% of the identified religious needs of the Navy, in contrast to the Non-liturgical free exercise needs which were approximately four times the Liturgical Protestants.

34. The CHC’s October 1999 “Study on Religious Affiliation in DON”, Exhibit 9, admitted “The Navy Chaplain Corps has never conducted an in-depth study of the religions affiliation of members in the Navy and Marine Corps.” *Id.* at 2 (cover page not counted in original) (produced in *Larsen v. U.S. Navy*, LAR 0360).

35. The Thirds Policy created a denominational barrier allowing Liturgical Protestant (35%)

and Catholic (25%) chaplains, *i.e.*, the liturgical traditions, to shape the CHC , establish a denominational hierarchy, and maintain control of the CHC while excluding Non-liturgical chaplains from real influence and representation.

a. No Navy document or witness has explained the rationale or logic behind the Thirds Policy's FGC percentages or how FGC recruiting goals or end strengths from FY87-00 were computed.

b. The Navy continued to emphasize recruiting Liturgical Protestant chaplains despite those faith groups shrinking memberships. *See* Exhibit 8, Accession goals FY88-2001. In some years the Liturgical Protestant accession goal was twice that of Non-liturgical. The total accession goals over the 13 year period show the Thirds Policy for accessions had morphed into one-third each for Catholic, Liturgical Protestants, and the remaining one-third for Non-liturgicals and Special Worship.

c. Five Year End Strength plans show the CHC's consistent attempts to increase the Liturgical Protestant percentage of the CHC and decrease Non-liturgical percentages below the Liturgical Protestant FGC.

36. The Navy's categorization of FGCs in general and of "Non-Liturgical Protestant" in particular is arbitrary, capricious and masks discrimination against the Non-liturgical FGC's more religiously conservative members.

a. Catholic is a single FGC but it represents only a single denomination. Other "catholic" groups whose liturgy and history are similar, who share the same sacraments, *e.g.*, Orthodox, Liberal Catholic, are not included. The only difference between these "catholic" groups is they reject the authority of the Pope. However, the rejection of one group's authority by others is common to Protestant denominations and all other

religions.

b. The denominations in the Liturgical Protestant FGC have similarities in terms of a common origin, historical doctrine, sacraments and liturgy.

c. In contrast to the relative homogeneity of the Liturgical Protestant and monolithic Catholic FGCs, the Non-liturgical FGC represents a wide spectrum of religious perspectives and worship practices, many of which are rejected by some groups within the FGC, *e.g.*, some faith groups reject pentecostal practices. *See* Declaration of CAPT James Poe, CHC, USN (Ret.) (“Poe”), Regional Chaplain, Naval Region Europe ¶¶ 10-12 (Exhibit 10).

d. Despite significant differences, the CHC treats all Non-liturgicals as fungible. Plaintiff Dufour pastored the Naples Non-liturgical contemporary Protestant worship service in which contemporary music and musicians were important parts. The Catholic command chaplain planned to replace CH Dufour with a Non-liturgical chaplain whose faith group did not allow using musical instruments in worship. Poe, ¶¶ 17-19.

37. The Non-liturgical FGC classification facilitates religious favoritism for the Navy’s preferred denominations and hides the CHC’s bias against the Non-liturgical faith groups (and other conservative liturgical faith groups) in accessions, promotions, career opportunities , assignments, and retentions as shown in Counts 3 and 5 and other places herein.

38. The FGC categories are arbitrary, fail strict scrutiny because they serve no legitimate compelling secular or neutral purpose, and were and are not narrowly tailored to do so, and any Establishment Clause test and violate the Fifth Amendment.

39. This claim is common to all plaintiffs and class members.

COUNT 2

THE NAVY ESTABLISHED AND MAINTAINED AN UNCONSTITUTIONAL RELIGIOUS HIERARCHY AND PREFERENCE SYSTEM THROUGH ITS DENOMINATIONAL AND/OR FAITH GROUP CLUSTER GOALS AND/OR QUOTAS

40. The allegations of paragraphs 1 through 39 above are incorporated herein by reference as though pleaded in full.

41. The Navy's unlawful religious quota system described above favors Catholic and Liturgical Protestant chaplains in promotions, retention, and career opportunities while Non-liturgical chaplains are denied these same benefits and rewards of military service.

42. A statistical examination of the CHC's practices and policies by the *CFGC/Adair* plaintiffs' expert found: (a) "Every dimension of personnel management which can be illuminated with data shows that Non-liturgical chaplains are disadvantaged by the CHC's policies and practices of religious preference....", Compendium Declaration of Dr. Harald R. Leuba, Ph.D. (the "Compendium"), at 16, ¶8, 13 to *In re Chaplaincy* Doc. No. 21, incorporated by reference; and (b) Dr. Leuba's further analysis concluded:

The inescapable conclusion is that U.S. Navy Chaplain Corps' personnel decisions are contaminated by considerations of denomination. There is an institutional preference among denominations (Catholic > Episcopal > other Liturgical > Baptist > other Non Liturgical > Orthodox and Special Worship) and this preference priority forms the basis for populating the selection boards; that pattern of preference in turn controls the mix of denominations which are selected into, promoted within, or involuntarily retired from the U.S. Navy Chaplain Corps. The favored denominations receive disproportionate benefit; the disfavored ones are denied unbiased and equitable consideration for admission, advancement, and tenure."

Dr. Leuba's Allonge Declaration ¶6 (Exhibit 11).

43. The Thirds Policy was applied to accessions, influenced promotions, controlled retention and selective early retirements resulting in the illegal preferences shown above and the creation of distinct hierarchies of preferred denominations in the Navy.

A. Religious Favoritism and Preferences in Chaplain Accessions

44. To implement its Thirds Policy, the Navy rejected otherwise qualified Non-liturgical chaplain candidates, including CFGC and AGC candidates, because of CHC bias against their faith group's beliefs, traditions and worship practices.

a. The Thirds Policy was implemented by two distinct mechanisms, (i) the Navy's uncontrolled ability to establish arbitrary FGC accession goals unrelated to Department of Navy ("DON") free exercise needs and (ii) the CARE Board process which uses chaplains to evaluate other faith groups candidates for appointment as chaplains with no objective criteria. Because more Non-liturgicals applied than Liturgicals, the CARE board process was necessary to conform the applicant selections to the Thirds Policy.

b. Although Non-liturgical faith groups provided the largest FGC group of Navy chaplain candidates from 1985 to 2005, their FGC acceptance rate was 70.39% compared with the Catholic accession rate of 94% and Liturgical Protestant rate of 82.5%.

c. The Navy has three accession programs for chaplains: the Chaplain Candidate Program ("CCP") (or Theological Student Program); the D4105-A, which takes civilian clergy and commissions them directly to active duty; and D1405-I, which commissions civilian clergy into the inactive Naval Reserve.

d. Statistical analysis of FGC accession rates from 1985 to 2005 for all chaplain accession programs shows a consistent pattern of preference for Roman Catholics ("RC"), followed by Liturgical Protestants ("LP") and in two of the three programs, Special Worship ("SW") followed by Non-liturgical ("NL") faith groups.

Program	RC	LP	NL	SW
CCP	95.0%	82.5%	75.6%	88.8%
D4105-A	92.4%	77.0%	65.7%	61.4%
D4105-I	96.3%	77.3%	60.7%	75.0%

Source: Tables 1 (CCP), 7 (D4105-A), and 8 (D4105-I), from *Larson v. U.S. Navy*, No. 02-cv-2005 Exhibit 28 to Doc. No. 48., September 2006 Withdrawal & Correction Declaration Denominational Preference in the U.S. Navy Chaplain Corps Accessions, Expert Declaration of Harald R. Leuba, Ph.D., (the “W&C”), incorporated by reference.

e. FGC active duty acceptance rates from 1985 to 2005 for officers who completed the CCP, the S4105 program, show the same consistent pattern of preference. Non-liturgical (“NL”) faith groups are last again.

Program	RC	LP	NL	SW
S4105-A	100%	94.0%	76.8%	91.3%

Id., Table 3 (S4105-A).

f. There are wide variations in the faith group accession rates within the Non-liturgical FGC. AGC and CFGC, which supplied the second largest number of Non-liturgical candidates, have some of the lowest accession rates, 1998-2005 Non-liturgical Accession, Table QE-6 from *Larson v. U.S. Navy*, W&C, pp. 149-150 (**Exhibit 12**);

g. The wide variation in the FGC accession rates is due to the Navy’s use of a set of favored denominations for its CARE Board memberships who tended to approve those most like themselves and reject or limit those not like themselves.

The Navy’s Implicit Favorites:

**Percent Recommended
for Accession***

Tier I Roman Catholic

- There was at least one Roman Catholic on most CARE Panels 96.40%

Tier II SB, ELCA, UM, LMS, NBCUS, BGC, ABC, CS & SDA

85.45 %

- Significant representation on CARE Advisory Group

Tier III EC, AME, PNBC, RCA, etc 79.71 %

- Minimal or No representation on CARE Advisory Group

* Data from Navy's electronic data base, 27 July 2006

Source: The Siskin Conjecture, ¶ 63, Exhibit 15 to *In re Navy Chaplaincy*, Doc. No. 21 (Rule 54 Motion), incorporated by reference.

h. Statistical analysis of board memberships and board decisions shows the CHC treated Baptists more favorably than non-Baptist Non-liturgicals ("NBNL").

45. Examination of every accession program from 1986 to 2005 shows the same CHC denominational hierarchy and preferences in violation of the First and Fifth Amendments and RFRA.

B. Religious Preferences and Favoritism in Chaplain Recalls to Active Duty

46. In addition to chaplain accession goals favoring Liturgical Protestants, the Navy's Reserve chaplain recall policy has demonstrated an illegal preference for Catholics and Liturgical Protestants, which has supported the Thirds Policy's objectives.

a. In violation of its own policy and regulations, the Navy has brought senior ranking liturgical chaplains to active duty from the Naval Reserve who reduce the available promotion opportunities, then compete for promotions at the next higher level and are selected for promotions without serving the necessary time in the difficult tours and demanding assignments the Navy requires for Non-liturgical chaplains to be competitive for promotion, *e.g.*, CAPTs Rock (RC), Vierra (UCC), Anderson (RC). *See* Count 5.

b. Whereas Non-liturgical chaplains who left active duty and were promoted to LCDR in the Reserves had to give up their rank to return to active duty, Catholic and Liturgical Protestant chaplains were allowed to return to active duty and keep the rank above LT obtained in the Reserves.

c. In September 2001 the Navy brought CDR John Lyle, a Catholic reservist, to active duty. The Navy first placed him on temporary duty for 208 days, a violation of the Joint Travel Regulation which limits temporary duty to 180 days, and disguised his illegal recall by recalling him as a flight surgeon. Exhibit 13.

C. Religious Preferences and Favoritism in Chaplain Continuation on Active Duty

47. The goal of the unconstitutional Thirds Policy¹² was further implemented by a deliberate, systematic, discriminatory Navy retention policy whose purpose was to keep Non-liturgical chaplains from continuing on active duty beyond their initial three-year tour, assuring they would not be considered for promotion and minimizing their future influence.

48. The Navy routinely accessed more chaplains than it needed, deciding whom it would retain or release by a Chaplain Active Duty Retention Advisory Group (“CADRAG”) board.

a. When CADRAG results are examined by denomination and Tier, *see* ¶ 43, the results show the board members’ and applicants’ denominations are important.

Probability of Selection for Continuation in Service Candidate Denominations Tiered

Faith Cluster	Number Considered	Number Selected	Number Rejected	Percent Continued	Percent Rejected
Tier I	46	43	0	100%	0%
Tier II	85	69	8	89.6%	9.4%
Tier III	115	86	18	82.7%	15.7%
Total	246	198	26	88.6%	10.3%

* Number Considered includes selected + rejected + alternates.

¹² Plaintiff’s challenge of the Thirds Policy is not limited to the percentages or classifications associated with its origin and practical application but on the Navy’s ability to adopt arbitrary denominational personnel and personnel management goals, targets or objectives associated that have no compelling purpose and are unrelated to providing effective ministry to DON and other authorized personnel. Thirds Policy is a synonym for such arbitrary decision making power.

Source: Table 5 from the Siskin Conjecture

b. These results are statistically significant (using a Chi Square statistic) at $p < .001$ (more than three standard deviations.) Chance alone cannot account for this significant difference among the denomination-based clusters. Most plaintiffs' fall in Tier III.

c. The Navy has not provided neutral and objective criteria by which CADRAG boards review chaplain records.

d. The evidence above shows the CHC has no objective criteria to evaluate performance for continuation purposes. Decisions as to who would be released from active duty after their initial three years of service were influenced by a chaplain's faith group under the Thirds Policy, not on performance or meeting DON's religious needs.

D. Religious Preferences and Favoritism in Chaplain Promotions

49. The CHC applied the Thirds Policy to promotions. Analysis of promotion board results shows the original Thirds Policy continued to remain generally in effect through FY1995.

Catholics did not fill their accession quotas but reduced Catholic accessions did not affect the number of Catholics promoted to CAPT until approximately 1996.

a. During some time periods, CHC promotion boards consistently promoted approximately the same number of Liturgical Protestant chaplains as Non-liturgical chaplains, indicating the Thirds Policy evolved into (i) a quota making Liturgical Protestant chaplain promotions approximately equal to Non-liturgicals, and (ii) a floor of at least one-third Liturgical Protestants in the CHC. The chaplain LCDR and CDR promotion boards for FYs 97-99 provide the following FGC results. Liturgical Protestant consistently averaged at least 34% of promotions regardless of their percentage of the DON's religious population.

FY	Catholic	Prot. Liturgical	Non-liturgical	Special Worship
<u>Commander</u>				
97	6	8	6	
98	2	2	3	
99	<u>6</u>	<u>9</u>	<u>8</u>	
Total (50)	14 (28%)	19 (38.0%)	17 (34%)	
<u>Lieutenant Commander</u>				
97	6	9	6	1
98	3	7	9	1
99	<u>7</u>	<u>9</u>	<u>14</u>	
Total (72)	16 (22%)	25 (35%)	29 (40%)	2 (3%)

- b. The Non-liturgical FGC classification hides the CHC's bias against the non-Baptist Non-liturgical faith groups.
- c. The promotion board results show CHC's strong bias against prior-service Non-liturgicals.
- d. Cohort analysis of promotion rates shows the standard pattern of prejudice, Non-liturgicals are below Liturgical Protestants who are below Catholics.
50. By policy and practice, the CHC has established a favored set of denominations for use on selection boards which distribute government benefits.
- a. From FY1977 to 2003, 80% of promotion board memberships went to five denominations: Roman Catholic (RC), Southern Baptist (SB), U nited Methodist (UM), Presbyterian Church USA (PUSA), and Evangelical Lutheran Church in America (ELCA)
- b. Statistical analysis of board precepts showing the frequency of denominations participation on promotion boards, shows the Navy's Implicit Favorite Denominations can be divided into four tiers:
- Tier I** Roman Catholic
- a faith group cluster composed of one denomination
 - There was at least one Roman Catholic on every Promotion Panel

Tier II PUSA, SB, ELCA, UM , LMS, ABC, CC(DC), UCC & SDA

- Double digit percentage likelihood of representation on Promotion boards

Tier III EC, AME, NBCUS, PNBC, RCA, etc.

- non-trivial participation

Tier IV CGIC, CR, ORTH, CHCCC, N, PCA, GAGB, CFGC, etc.

- Minimal participation, or no participation on Promotion Boards

Source: Siskin Conjecture, ¶ 48, Exhibit 15 to *In re Navy Chaplaincy* plaintiffs' Rule 54(b)

51. The CHC reserved at least one selection board membership for Roman Catholic Chaplains for every possible career grade selection board that did not require Admiral board members from 1976 (FY77) until FY2002.

E. Religious Preferences and Favoritism in Chaplain Retention

52. This preference gave Catholics the ability to manipulate and control selection boards through secret votes, the small numbers of members and lack of accountability. *See* Count 4.

53. The evidence shows the Navy discriminates in its chaplain retention policies and practices on the basis of a chaplain's religious faith group or denomination.

a. In spite of Title 10 U.S.C. § 632's requirement that an officer who is twice passed over for promotion be separated from the Navy, chaplains from favored denominations have been retained by the CHC despite multiple FOS. Many Catholic chaplains who have twice FOS have been routinely provided with additional 3rd, 4th and more opportunities for promotion, whereas chaplains of Non-liturgical faith groups or denominations, including many of these plaintiffs, have routinely been separated after two FOS.

b. Although 10 U.S.C. § 14509 required separation of Reserve officers at age 60 until 2004, the CHC has retained Catholic chaplains, including FOS LTs and LCDRs, into their 60's and 70's until they qualify for a pension at 20 years time in service; retention was necessary because these Catholics had been accessed beyond the statutory age limit.

c. The Navy has used the SER process to reduce the number of higher ranking Non-liturgical chaplains, removing them from service while retaining Liturgical chaplains with inferior records and less potential for future service. This insured domination of the CHC by the liturgical tradition and the minimization of Non-liturgical influence and opportunity for consideration for Admiral.

d. While “SERBing” Non-liturgical chaplains, the Navy has recalled liturgical Reserve chaplains at the career ranks of LCDR, CDR and CAPT, contrary to Navy policy, promoting many after they have returned to active duty. Bringing these chaplains on at higher ranks reduces the number of promotions accordingly. *See* Count 5.

e. The CHC has used both its promotion and CADRAG systems to enforce its Thirds Policy, forcing out otherwise qualified Non-liturgical chaplains, thereby ensuring Liturgical Protestant domination of the CHC. *See* Count 4.

F. Religious Preferences and Favoritism in Chaplain Positions of Power

54. The Navy and CHC have fostered a “high church” Protestant and Catholic monopoly of Chief of Chaplain’s position by policy and practice.

a. In 1988-2000, three of the four Chiefs of Chaplains were Lutheran. Prior to the *CFGC* and *Adair* chaplain lawsuits, only one clearly Non-liturgical officer has held the CHC’s highest post, Chief of Chaplains. List of Chiefs of Chaplains (Exhibit 2).

b. Since the lawsuit were filed a Non-liturgical Chief was selected.

55. The Navy has delegated to the Chief unchecked and almost unlimited power in assignments, staffing, membership on selection boards and other key management decision areas that allow him to shape the CHC by control who occupies the key positions that manage the CHC.

56. The long reign of liturgical Chiefs who control the assignments of chaplains to key billets

and their ability to manipulate selection board denominational results as shown below has fostered the promotion of a disproportionate number of “high church” Protestant and Catholic Chaplains to the ranks of Commander, Captain and Admiral.

57. Liturgical and/or favored denominations have dominated key CHC Billets ensuring their preferential treatment by future selection boards.

a. In January 1995, the Chaplain of the U.S. Marine Corps, CH (CAPT) Larry H. Ellis, wrote a memo to Navy Chief detailing years of apparent institutional bias against “low-church” Protestant Navy chaplains in regard to assignments to the most prestigious and influential positions or billets within the CHC. CAPT Ellis Memorandum to Chief of Chaplains (hereafter “Ellis Report”) (Exhibit 14).

b. CAPT Ellis’ memo states that as of his 1/25/95 report, only 14 clearly Non-liturgical Navy chaplains had filled the 119 top CHC billets over the prior 15 year period (1979-84), a fill rate for Non-liturgicals of 11.8%. *Id.* at ¶ 5. The fill rate for Liturgical Protestants was greater than 50%, *id.*, far out of proportion to the percentage of the liturgical denominations in the general population, the DON or the CHC.

c. Despite this clear indicator of institutionalized religious discrimination, the Navy took no corrective action.

d. Catholics and Liturgical Protestants still occupied a disproportionate percentage of those same key positions when these suits were filed.

e. The policy placing two Catholic chaplains on every selection board (the 2RC Policy) from at least FY1977 to 1986 (started by RADM O’Connor and continued by following Chiefs) and the subsequent reduction to only one Catholic on each board (the 1RC Policy) led to a high selection rate for Catholics not based on performance or other

legitimate selection criteria, especially at the key CDR level.

f. Chiefs after RADM O'Connor followed his policy and placed two or more Liturgical Protestant chaplains on most chaplain selection board in addition to two Catholics, prejudicing plaintiffs and establishing favoritism for the liturgical tradition.

g. The 2RC policy was replaced in 1986 by the 1RC Policy, following a successful judicial challenge to the 2RC policy. The 1RC policy continued through FY 2002.

58. The effect of the above policies can be seen in the table below showing what happens to the careers of one hundred chaplains of each FGC and when the Non-liturgical FGC is subdivided into Baptists and non-Baptists. *See* Compendium Table K-10.

Career Pattern by Faith Group

Faith Group →	Roman	Liturgical	Baptist	Non-Baptist
Period ↓	Catholic	Protestant		Non-liturgical
Accessioned	100	100	100	100
Serve 10 yrs	47	56	63	66
Serve 20 yrs	39	54	60	60
Serve 30 yrs	22	37	14	20
Rise to CDR	48	43	38	29
Rise to CAPT	23	22	15	11

59. This data shows a consistent pattern:

a. Catholics and Liturgicals are “over-represented” in the top categories of rank and longevity (30 years) - signaling that they were promoted and retained in the CHC in excess of their DON and CHC representation.

b. The percentage of Catholics promoted to CDR and CAPT is greater than that of any other FGC, showing their advantage in the promotion process.

c. Non-liturgicals in general, and Non-Baptist Non-liturgicals (NBNL) in particular are under-represented in length of service (30 years), showing they were not promoted and had to leave. Had they been promoted, that record would have appeared in the CHC History (biography) volumes as they would have been on active duty with their peers.

d. Non-liturgicals in general, and NBNLs in particular are under-promoted; even those who survive their initial tours have an average lower rank than chaplains from other FGCs.

60. The effect of the Navy's 2RC and 1RC Policies, its denominational quota system and its granting religious preferences to the liturgical religious traditions has impermissibly endorsed Catholic and Liturgical Protestant as preferred religious traditions and the CHC's denominational hierarchy, in violation of the First Amendment's Establishment Clause.

61. These policies clearly established denominational preferences and discriminated against plaintiffs, Non-liturgical chaplains and the personnel they represent, but served no legitimate compelling secular or neutral purpose, and were not narrowly tailored to do so.

62. These above patterns and practices which established a denominational hierarchy, violate the Constitution's First and Fifth Amendments, and fail strict scrutiny and any Establishment Clause test.

63. This claim is common to all plaintiffs and the class.

COUNT 3

THE NAVY ESTABLISHED AND MAINTAINED AN UNCONSTITUTIONAL CHAPLAIN ACCESSION SYSTEM UNRELATED TO MEETING THE DEPARTMENT OF NAVY'S FREE EXERCISE NEEDS

64. The allegations of paragraphs 1 through 63 above are incorporated herein by reference as though pleaded in full.

65. The only evidence the Navy has produced addressing its evaluation of the DON's free exercise needs shows it never did that before October 1999 (FY 2000), *see* Exhibit 9 (CHC briefing on DON Faith Group Preferences, pg. 3).

66. This and ¶¶ 43-45, incorporated by reference, show the Thirds Policy accession system had no connection or nexus to the purpose of the CHC, to meet DON's free exercise needs, and the Thirds Policy accession system was the Navy's vehicle to establish its preferred hierarchies.

67. No Navy document or witness could explain how the actual FGC goals were derived.

68. The current Navy accession system retains the ability to establish arbitrary faith group or denominational goals with no basis or linkage to is the DON's Free exercise needs

69. No Navy document provides a basis for determining the proper number and composition of chaplains by denomination or determining the available pool of qualified clergy as required by *Hazelwood School Dist. v. U.S.*, 433 U.S. 299, 309 (1977) and its progeny.

70. The Navy's ascensions system is unconstitutional because the above and ¶¶ 43-45 show the Navy's chaplain accession system results in denominational preferences unrelated to any foreseeable Free Exercise need , including DON's and the accession system is not narrowly tailored to achieve the CHC's constitutional purpose and is nothing more than a federal jobs program for clergy.

71. The Navy's ascensions system is also unconstitutional because it relies on the unconstitutional CARE Board procedures described and challenged below.

72. This claim is common to all plaintiffs and the class because the preference conveys a message of forbidden favoritism, the failure to provide sufficient Non-liturgical chaplains has increased the burden on those accessed and the under utilization of liturgical chaplains is a symbol of preference and harm.

COUNT 4

THE NAVY'S PAST AND PRESENT CHAPLAIN SELECTION BOARD SYSTEMS VIOLATE THE FIRST AND FIFTH AMENDMENTS AND RFRA

73. The allegations of paragraphs 1 through 73 above are incorporated herein by reference as though pleaded in full.

A. Common Characteristics of the Navy's Unconstitutional Selection Board Procedures

74. The Navy chaplain selection board procedures challenged here grant unlimited discretionary power to chaplains, who are defined, hired and treated as denominational representatives, to award government benefits and ruin chaplains' careers with no accountability and no effective guarantees the delegated power will be used for neutral, secular and non-ideological purposes.

75. In contrast to the U.S. Army and U.S. Air Force, which use large selection boards made up of officers from other categories (both line and staff) to select their officers for promotion, retention or SER, the Navy uses small boards where one member's secret vote can preclude promotion or retention with no accountability.

76. Until 2002 after the litigation was filed, these selection boards were dominated by Chaplains. After 2003, the Navy reduced the number of chaplains on promotion boards to two, one of whom is the Chief or his Deputy, who rotate as board president.

77. The U.S. Army and U.S. Air Force require each board member to individually examine and vote on each candidate's record which is then recorded, providing accountability for each member's vote, contrary to the Navy. The Navy requires each member to vote in secret, keeps no record of each member's vote, requires a board member to brief a candidate's record; there is no record as to who briefed or what was briefed, after which the board votes. The Navy allows

discussion of the candidate's record after the briefing, but keeps no record of such discussion.

78. The U.S. Army and U.S. Air Force exclude their Chiefs and Deputies from serving on selection boards. The Navy uses the Chief or Deputy as board presidents, despite evidence from the Navy's investigations that Chiefs can influence subordinate board members and an inappropriate word, phrase, expression or subtle nuance can influence a board member's vote and deny a chaplain selection, for which there is no accountability.

89. The use of Chiefs and Deputies (RADMs) as board presidents who control a chaplain's career, assignments and promotion opportunities, encourages abuse and squelches reporting board misconduct, a fact the Navy's investigations verify.

80. These procedures, individually and collectively, violate the First and Fifth Amendments, and the challenge thereto is common to all plaintiffs and the class.

B. The Navy's CARE Board System and Its Procedures are Unconstitutional

81. The instrument for implementing the Thirds Policy in the past and shaping the CHC now or in the future is the CARE board process which controls the chaplain accession system and is dominated by chaplains who do not apply any objective criteria when evaluating candidates.

82. The CARE board members, including denominational representatives, who award or deny government benefits, use selection board procedures that grant unlimited discretionary power to chaplains with no accountability and no effective guarantees the power will be used for neutral, secular and non-ideological purposes.

83. The CARE Board system, along with its procedures, have produced denominational hierarchies, *see* ¶ 43.g, and violate the First and Fifth Amendments.

84. This claim is common to all members of the class, *see* ¶ 73.

C. The Navy's Chaplain Promotion System Is Unconstitutional

85. In contrast to the U.S. Army and U.S. Air Force, which use large selection boards made up of officers from other categories (both line and staff) to select chaplains for promotion, the Navy's small chaplain selection boards, which failed to select most of these plaintiffs, until recently were dominated by chaplains.

- a. From at least FY77 to FY87, all board members were chaplains. From FY87 until after the FY01 CAPT board, *i.e.*, after *Adair* was filed, each career grade promotion board had one line officer.
- b. Beginning in FY02, there were two line officer board members.
- c. Currently, career grade promotion boards have two chaplains, one of whom is the Chief or Deputy, who act as president.

86. In spite of the stated precept the board may consider only merit and not denominational affiliation, until 2002, after several chaplain suits were filed, each selection candidate's three digit "faith group identifier" code (called an additional qualification designator or "AQD") was prominently displayed throughout the selection board process.¹³ The Navy chaplain promotion board members, who are denominational representatives, were clearly made aware of each chaplain promotion candidate's denomination or faith group.

87. This procedure's only purpose was to identify a candidate's faith group to the board, thereby creating a suspect religious category unrelated to any legitimate Navy objective. This procedure allowed the Navy to enforce its Thirds Policy and permitted chaplains to exercise their individual or faith group prejudice for or against other chaplains or faith groups, particularly against Non-liturgical chaplains.

13 In other chaplain litigation, the Navy maintains it no longer identifies each chaplain's AQD to the board members.

88. The Chief of Chaplains is a RADM and approved all chaplain board members for the Navy's chaplain promotion boards until after the chaplain suits were filed, and may still approve or influence the chaplain board membership.

a. In 1976, Catholic Chief of Chaplains RADM O'Connor began placing two or more Catholics on each career grade chaplain promotion board.

b. The Liturgical Protestant Chiefs who succeeded RADM O'Connor continued placing two Catholics on every board along with at least two Liturgical Protestant chaplains, sometimes the same denomination as the Chief or his Deputy.

c. The CHC stacked boards with Liturgical chaplains from FY77-02; some boards had no Non-liturgical board members. Exhibit 15.

d. The 2RC Policy ended in 1986 when CH (then LT) Ronald Wilkins, faced with discharge after two FOS, challenged the 2RC policy and obtained an injunction against his discharge. The *Wilkins* Court found "the [Navy]'s policy of placing two chaplains of the Roman Catholic faith on each and every Chaplain Corps Selection Board" was probably "a violation of the First Amendment." *Wilkins v. Lehman*, Civil No. 85-3031-GT, slip op. at 8, (S.D.Cal. 2/10/86) (Order Granting Injunction). Exhibit 3.

e. The Navy then settled with CH Wilkins, which included an end to the 2RC Policy.

f. The *Wilkins* Court suggested the Navy adopt the Army and Air Force practices of using non-chaplains as board members, which the Navy rejected.

g. The Navy adopted the 1RC policy (the Chief was Catholic RADM McNamara), reserving a promotion board membership for one Roman Catholic chaplain on every career grade selection board that did not require Admirals as board members, until FY 03.

h. Although Catholics represent about 23.6% of the Navy (*see* Exhibit 5 and ¶ 19)

and despite the *Wilkins* decision indicating that placing two chaplains of the same denomination on the same chaplain promotion board was constitutionally suspect, the Navy placed two Roman Catholic chaplains on the FY97 LCDR Chaplain Selection Board and on the FY98 CDR selection board. Because the Chief selected or approved the board members, this was not an accident or the result of some random process.

89. Existing records identifying the board members for the 73 career grade promotion boards from FY77-02 (Exhibit 15) show the following frequency of denominational and faith group cluster (FGC) representation on these boards. See Compendium Table 1.

**Representation by Faith Group & FGC
Number of Boards**

Seventy Three Boards	Roman Catholic	Liturgical Protestant	Non-liturgical		Special Worship	
			Baptist	Other	Jewish	Other
Number of Boards with No Officers of this Faith:	0	0	16	52	66	57
Number of Boards with One Officer of this Faith:	42	13	40	20	7	16
Number of Boards with Two Officers of this Faith:	29	35	17	1	0	0
Number of Boards with Three Officers of this Faith:	2	21	0	0	0	0
Number of Boards with Four Officers of this Faith:	0	4	0	0	0	0

90. This clearly shows religion-based decision-making took place in composing CHC promotion boards.

- a. Every chaplain promotion or SER board from FY77 to FY02 not requiring Admirals as board members was composed under the 2RC or 1RC policy. A few promotion boards had three Catholic members.
- b. Eighteen percent of the boards had one Liturgical Protestant Chaplain, 82% had two or more and 29% had three. No board lacked a Protestant Liturgical board member.
- c. Some boards had no Non-liturgical board member and only 18% of the boards had a Non-Liturgical Non-Baptist (“NBNL”) board member.
- d. The Navy discontinued its 1RC Policy in FY03, after several chaplain lawsuits challenged the practice in their complaints.

91. “Having the good fortune to find a member of your denomination on the selection board is worth a 25% increase in your likelihood of selection [(65%-51%)/51%]; a close match is worth about half that benefit.” Allonge Declaration of Harald Leuba, Ph.D. (Exhibit 11) at 7, ¶22. Allonge Table 1 (pg.7), shows the “Effect of a Denominational Match on Selection for Promotion (to Commander, 1981-2002)”

Candidate Category	Number Considered	Number Selected	Probability of Promotion
1. Catholic (Always a Match)	170	113	.665
2. Non-Catholic, Strict Match	111	72	.649
3. Non-Catholic, Close Match	94	54	.574
4. Non-Catholic, No Match	328	168	.512

92. The Chief’s control of the composition and membership of CHC promotion boards served no purpose or rationale except to control the composition and makeup of the CHC in a manner to ensure the continued operation of the Navy’s illegal religious quota system for the benefit of preferred religious traditions.

- a. Exhibit 16 shows the over- and under-representation of FGC board members

compared with the LT community under consideration for promotion to LCDR. Catholics were never under-represented whereas Non-liturgicals always were.

b. Exhibit 17 shows the over and under representation of FGC board members compared with the LCDR community under consideration for promotion to CDR.

93. As stated in ¶ 38 above, the Navy has a favorite set of denominations for promotion board memberships, giving five denominations 80% of chaplain promotion board memberships from 1977-2002 as shown. The column “% Selected to CDR”, shows the denomination of board members influences the board results and the favored denominations receive more promotions than the less favored from which many of these plaintiffs come.

1977 thru 2002 Denominational Appearance as Promotion Board Members

()= total number of appearances

Faith Group Cluster →	Roman Catholic	Liturgical Protestant	Non-Liturgical Protestant	Special Worship	% Selected to CDR*
Tier I - 100%	RC (102)				48.34 %
Tier II - 25 to 40%		PUSA (43) ELCA (29) UM (21) LMS (15) ABC (12) UCC (10) CC/DC (10)	SB (37)	SDA (11)	45.07 %
Tier III - 7 to 15% 4 to 8 seats in 25 years		AME (8) RCA (7) EPIS (7)	NBCUS (7) PNBC (7)	J (6)	36.12 %
Tier IV - 0 - 5% 0 to 3 seats in 25 years	5 Other [Catholic type] (0)	CRC (3) ECCA (3) CME (2) 53 Others(0-2)	BGC (5) GARB (4) CGIC (3) 109 Others (0-2)	LDS (4) ORTH (3) CS (1) 10 Others (0)	27.00 %

* As reported in Biographies, Chaplain Corps History, Volume X.

Source: the Siskin Conjecture, ¶ 48, Exhibit 15 to *In re Navy Chaplaincy* plaintiffs' rule 54(b) Motion to Amend or Alter 2002 Interlocutory Decision. *In re Navy Chaplaincy* Doc. No. 21 (incorporated by reference).

94. These differences are statistically significant, *i.e.*, not the result of chance, showing some board members advance their own denominations in violation of the Establishment and Due Process Clauses, which occurs at the expense of plaintiffs and the less favored denominations.

95. Although one of the CHC's favored denominations for board memberships was the Southern Baptist Convention, *see* ¶ 38 *supra*, the denomination of several of these plaintiffs, this favoritism has masked and/or enabled prejudice against these plaintiffs because of their strong conservative theological and evangelical beliefs..

a. Testimony in *Adair v. Winter*, shows "there was a big battle in the Southern Baptist Convention with liberalism vs. conservatism" in the 1970s and '80s

b. That same testimony, agreeing with some plaintiffs experience, shows some senior Southern Baptist chaplains were very liberal and for all practical purposes were liturgical.

c. The ability to zero out a chaplain with no accountability allowed liberals of any faith group to end the careers of committed evangelicals and conservatives.

d. The fact Southern Baptists were favored in a CHC whose leadership was largely Liturgical Protestant is no defense for the Navy's illegal and burdensome prejudice and discrimination against these Southern Baptist, Baptist and non-Baptist plaintiffs.

e. Analysis of promotion results for the denominations which had a Chief, compared with Southern Baptist which did not have a Chief in 1965-70, do statistically significantly worse than Catholics and other denominations who had a Chief.

96. Statistics show the Catholic and Liturgical Protestant domination of CHC promotion

boards, despite the religious demographics of the DON and the CHC, *see* ¶¶ 61-62, *supra*, has benefitted them to the detriment of plaintiffs.

97. The Chiefs and Deputies have exercised enormous, improper power and control over Chaplain promotions in their role as board president.

a. One Chief informed a board of his personal list of those whom he believed constituted “the future of the Navy.” The chaplains so identified were promoted. This is a *per se* violation of 10 U.S.C. § 615 (defining type of information provided to board) and § 616(f)(2) (improper influence on board forbidden) as well as the Navy’s promotion board policies.

b. RADM Holderby admitted to the NIG that as a RADM and board President, he could influence junior board members.¹⁴

c. The Chief and Deputy have inherent power to retaliate in subtle ways against any chaplain board member who challenges, disagrees with, or opposes them in selection decisions.

d. A line officer was board president for the FY01 CHC CAPT board. It selected 7 Non-liturgicals and 3 Liturgical Protestants. In FY02, the Chief was again board president and the board chose 10 Liturgical Protestants and 3 Non-liturgicals. The FY00 board (chaplain as president) selected 5 Liturgical Protestants and 5 Non-liturgicals.

98. The Navy chaplain selection boards challenged here, both promotion and SER, were and are composed of a small number of board members, usually five to seven, who vote confidence levels of 0, 25, 50, 75, and 100 in secret. One zero vote guarantees the candidate will not be

¹⁴ Plaintiffs’ recent statistical evidence shows candidates of the Chief’s denomination have a higher promotion rate when the Chief is board president. Plaintiffs will move to supplement the Complaint with this and other recent relevant evidence.

selected.¹⁵ This violates the First and Fifth Amendments by:

- a. Delegating to denominational representatives discretionary government authority to award, deny or terminate government benefits for other denominational representatives;
- b. This delegation is absent *guarantees* the authority will be used for secular, neutral and non-ideological purposes as shown by several board investigations;
- c. The display of a chaplain's faith group allowed some board members to exercise, either consciously or unconsciously, their denomination or faith group bias either (1) for those of their own faith group, thereby advancing their own faith group, or (2) against those faith groups with which they disagree or dislike, and thereby penalized them, all in violation of the First Amendment;¹⁶
- d. Allowed the Catholic and Liturgical Protestant traditions and the Chiefs to operate the CHC much like a religious patronage system, in violation of the First and Fifth Amendments;
- e. Provides an unchallenged opportunity for religious bias or denominational issues to interfere with selecting the best qualified chaplains for promotion;
- f. Promotes denominational factionalism by creating the appearance, if not the reality, of promotion decisions made on religious criteria unrelated to career performance and forbidden by the First and Fifth Amendments as indicated in the Stafford Report and the subsequent DOD Inspector General inspection described below;

15 The NIG investigation of the FY00 Chaplain CAPT Promotion board established the female chaplain board member "zeroed out" a female chaplain candidate because the female board member disagreed with the candidate's view of women in ministry. The NIG report describes zeroing out, a not uncommon practice on CHC boards.

16 Plaintiffs do not allege all chaplains on chaplain selection boards would vote on their biases or preferences, but some have and some would, knowingly or unknowingly.

- g. Allows some board members to violate without accountability federal statues and the Navy's own equal opportunity regulations and policy concerning selection of best qualified candidates for promotion or retention; and
- h. Promotes denominational tension by creating the appearance and reality of preferences for Catholic and Liturgical Protestants forbidden by the First and Fifth Amendments.

D. Evidence of Religious Discrimination In Chaplain Promotions

99. In 1997, responding to an allegation of religious discrimination by then LCDR Aufderheide on the FY97 and 98 Commander (O-5) chaplain promotion boards, CAPT J. N. Stafford, special assistant for Navy minority affairs, investigated the board results and submitted a report to the Chief of Naval Personnel (Exhibit 18).

a. CAPT Stafford's analysis of the FY97 and 98 chaplain CDR promotion selection boards indicated "that the board may have systematically applied a denominational quota system." *Id.* at 1, ¶ 2.

b. CAPT Stafford also noted physical fitness standards that would have kept line officers from being promoted were apparently "waived" or ignored for certain liturgical chaplains who were promoted. *Id.* at 2, ¶ 4.

c. The subsequent March 1999 DOD IG investigation into the same boards found faith group "may have been a factor in" both the FY97 and 98 CDR boards in selecting chaplains for promotion. Exhibit 19 (Extracts pp. 3 & 4).

d. The NIG and DOD IG board member interview notes clearly show denomination was a factor that overrode records, resulting in promotions for less qualified chaplains.

100. While the NIG and DOD IG's evidence validated CAPT Stafford's finding that

denomination was a promotion criteria, the Navy took no action to eliminate its use of “denominational considerations” for chaplain promotions or other obvious unconstitutional practices.

a. This evidence of systematic, illegal denominational bias shows Plaintiffs’ and their class’ opportunities for promotion were diminished in violation of the First and Fifth Amendments.

b. The 1RC and 2RC Policies established a forbidden religious test for board membership in violation of Article VI of the Constitution.

101. The CHC’s Policy of recalling mostly liturgical chaplains from the Naval Reserve at grades above LT in violation of its own regulations reduces the number of promotion spaces and denies plaintiffs and their class equal opportunity for promotion.

102. The promotion board results show a distinct bias and hostility toward Non-liturgical prior service chaplains. The CHC alleged it failed to consider prior officer fitness reports in evaluating plaintiffs for promotion, e.g., CH Weibling. This category includes 27 or 41.5% of the plaintiffs: Adair, Arnold, Blair, Byrum, Carson, DeMarco, Gordy, Hamme, Johnston, Klappach, Klappert, Kohlmann, Lancaster, Looby, Merrit, Mitchell, Prince, Quiles, Rush, Scott, Spalding, Stewart, Thompson, Torralva, Twombly, Watson, Weibling.

103. The following plaintiffs were FOS by boards for the indicated ranks. In some cases, plaintiffs were denied promotion at one rank, selected for promotion by a board either on active duty or in the Reserves, and subsequently FOS at the next rank in both active duty and the Reserves.

a.. **LCDR:** Bailey (three times), Belt (99), Bradley (FY03), Carson, Doney, Garner, Hamme, (90), Hendrix (89), Kitchen, Kohlman (93), Mac (92) Merit (96), Porter-Stewart,

Roman (2003), Rush (93), Thyron (99-2000), Watson, Weibling, Wineman;

b. **CDR:** Arnold, Blair (97), Calhoun (2001), Doney (Reserve), Farrell, (Garner (Reserve), Gibson (FY 99), Harkness (2000), Heinke (93), Hendrix (Reserves), Jones (2000), Kirk, Klappach (first time), Lancaster (91-first time), Lavelle (98), Marsh, Mitchell (01), Moreno, Nichols, Purser (2000 -01), Quiles, Roysden (98), Scott, Stewart, Swanson, Thompson, Torralva, Tostenson,, Twombly, Weibling (Reserve), Wilder (99), Wright, Xenakas;

c. **CAPT:** Denny, Gibson, Harkness (Reserve-08), Johnson, Klappach, Lancaster (97), Looby (03), Mak.

E. The Navy's Chaplain Active Duty Retention Advisory Group (CADRAG) or Similar Systems Is Unconstitutional

104. Paragraph 47 above describes the CADRAG process and its use of boards dominated by chaplains and are incorporated herein by reference as if printed in full.

105. Although Liturgical Protestant chaplains represented approximately 12% of the DON religious needs, they were routinely selected for retention beyond their initial 3-year tour of service in numbers disproportionate to their DON denominational membership. This policy supported the CHC's unrestricted ability to set arbitrary FGC and denominational allocations, e.g., the Thirds Policy with its 35% allocation for Liturgical Protestant chaplains, and resulted in the over-representation of Liturgical Protestant chaplains and the under-representation of Non-liturgicals in the CHC. Catholics were routinely continued resulting in over-representation of their fair share of available clergy.

106. The active duty extension process (a) allows senior chaplains to veto any application for extension on the basis of subjective evaluations alone, (b) provides no objective evaluation

criteria or (c) opportunity for applicants to rebut negative information by biased senior chaplains.

107. Evidence suggests and discovery will show the CADRAG decisions were influenced by the Thirds Policy and considerations unrelated to performance, including forbidden religious and denominational factors.

108. The CADRAG process and its decision procedures, including its board system, have used no objective criteria and provide no effective guarantees that denominational considerations do not enter into, influence or determine who remains on active duty and therefore violate the First and Fifth Amendments and RFRA.¹⁷

109. The following plaintiffs were separated under CADRAG: Hatch, Johnston, Nall.

F. The CHC Selective Early Retirement (SER) System Is Unconstitutional

110. The IRC policy was applied to every SER board that did not require Admirals as board members.¹⁸

111. Every CHC SER board had at least one chaplain board member and a Chief or his Deputy were on each board.

112. The CHC's favoritism for some denominations for board memberships, including Southern Baptists, *see* ¶ 38 *supra*, has masked and/or enabled prejudice against these plaintiffs, including these Southern Baptist plaintiffs, and their strong conservative theological and evangelical beliefs.

113. The Navy's SER precepts provide criteria for retention rather than for selection for SER, *i.e.*, those who have the greatest potential for future service are retained.

17 Recent CHC publications state the CHC will reinstitute the CADRAG process to review chaplains for continuation on active duty.

18 As an economy measure, the FY 91-94 CAPT SER boards whose members by regulation had to be Admirals, also conducted the CDR SER boards.

114. To decide who should be retained, SER Boards use the same challenged procedures used for promotion boards described above in ¶¶ 72-75.

115. Statistical analysis of SER results and a community manager memo stating SER would be necessary to denominationally balance the CHC shows the SER process was used to maintain denominational balance in support of the Thirds Policy, to the detriment of plaintiffs and the class.

116. All of the above challenged selection policies use facially neutral regulations and statutes as a cover for an illegal, systematic, discriminatory system or practice to accomplish forbidden religious discrimination and homogeneity in the CHC.

117. Analysis of SER board results (a) show marked differences in the outcomes when SER decisions are made by Admirals who are line officers versus when chaplains make the SER decisions; (b) suggest SER was used to “denominationally balance” the CHC and further the Thirds Policy; and (c) SER was used for retaliation or other improper purposes, such as eliminating future potential leaders in the CHC.

118. The Navy’s illegal recall system, *see* Count 5, protected the CHC’s favorite denominations from SER.

119. The Navy illegally retained Reservists, including those illegally recalled, on active duty instead of separating them prior to SERBing active duty chaplains, including these plaintiffs and other Non-liturgical chaplains in the class.

120. The following plaintiffs were illegally selected for SER at their indicated ranks: CDR Adair (96), CDR Byrum (96), CDR Demy, CAPT Ellison (97), CDR Klappach, CAPT Linzey (97), CAPT Prince (98).

121. The Navy’s denominational preferences evidenced by the above communicate twin forbidden messages, favoritism to liturgicals and inferiority and second class citizenship to

plaintiffs and the class and personally affect each plaintiff and member of the class.

122. The above Navy policies and procedures violate the First and Fifth Amendments, RFRA, are subject to strict judicial scrutiny, are not related to a compelling government interest, are not narrowly tailored to achieve that purpose, and fail any Establishment Clause test.

COUNT 5

THE NAVY'S CHAPLAIN RECALL SYSTEM VIOLATES ITS OWN REGULATIONS, IS DISCRIMINATORY, PREFERENTIAL AND UNCONSTITUTIONAL

123. The allegations of paragraphs 1 through 122 above are incorporated herein by reference as though pleaded in full.

124. Navy policy and regulations limit Reserve chaplain recall in the career ranks to positions that cannot be filled by active duty promotions. This limits such recalls to LTs.

125. The Navy has consistently violated its policy and Regulations, *see* ¶¶ 43 and 52.d, by recalling to active duty primarily Catholic and Liturgical Protestant Naval Reserve chaplains in significant numbers at the rank of LCDR and above.

126. These illegal recalls reduce the available promotion opportunities in the career grade in which the chaplain is recalled, and the recalls compete for promotions at the next higher level. Many have been selected for promotion without serving the necessary time in the difficult tours and demanding assignments the Navy requires for Non-liturgical chaplains to be competitive; *e.g.*, Chaplains Vieira and Lyle.

127. The Navy has not identified any senior or career grade billets requiring specific denominations nor announced or documented vacancies at career grades that cannot be filled by promotions from the regular active duty ranks.

128. The Navy's denominational preference for Catholics and Liturgical Protestants in recalling

Reserve chaplains to active duty in violation of its own policy and regulations communicates twin forbidden messages, favoritism for these denominations and inferiority and second class citizenship to plaintiffs and the class, some of whom have worked side by side with the illegally recalled Catholics and Liturgical Protestant chaplains, and been denied promotion, possibly because of the recallee's occupation of a career position. This message is particularly pronounced given the fact many of the illegal recallees have been promoted and earned reputations as known killers of Non-liturgical (Evangelical) careers while preferring and advancing liturgical chaplains.

129. The Navy's twin unconstitutional messages of preference and prejudice are specifically directed to plaintiffs and members of the class and communicated within the CHC through and by messages, meetings and publications bringing plaintiffs and the class into unavoidable contact with not only the message(s) but the personification of the Navy's forbidden message in the form of (a) illegally recalled Catholic and Liturgical Protestant chaplains as well as (b) the results of the Navy's illegal selection board procedures and biased personnel policies and practices. The message is also directly communicated by the assignment of plaintiffs and class members to work under the supervision of such illegally recalled chaplains.

130. The illegal recall system shields the favored denominations from SER, burdens plaintiffs and the class. *See* Count 4.

131. The Navy's illegal Reserve chaplain recall practice has demonstrated an illegal preference for Catholics and Liturgical Protestants in violation of the First and Fifth Amendments and RFRA. This Claim is common to all plaintiffs and the class.

COUNT 6

ALLOWING CHAPLAINS TO RATE OTHER CHAPLAINS, EXCEPT IN EXCEPTIONAL CIRCUMSTANCES, VIOLATES THE FIRST AND FIFTH AMENDMENTS [DISMISSED]

132. The allegations in paragraphs 1 through 131 above are incorporated herein by reference as though pleaded in full.

133. The Navy has created a culture and system which has allowed and allows certain senior chaplains to exercise their religious bias and destroy Non-liturgical chaplains' careers with no accountability.

a. No Non-liturgical or evangelical chaplain who worked for CH (CAPT) David Young at Naval Medical Center San Diego has been promoted; no Non-liturgical who worked under CH Buchmiller has been promoted on active duty; no Non-liturgical chaplain who has worked under CH Rock at Naples has been promoted; no pentecostal chaplain who worked under CH Rock or was considered by a board with him as a member has been promoted.

b. There are many other senior chaplains who have made careers out of destroying other chaplains' careers, *e.g.*, CHs Jane Vieira, Roy Swift, and at least one Non-liturgical senior chaplain who admitted his leadership style was to destroy everyone else so he would be the only one left standing.

134. Although aware of these career destroyers, the CHC and the Navy have taken no steps to minimize their ability to destroy the lives, careers and families of Non-liturgical chaplains, to discipline the career killers, or to protect, defend or remedy the damage to those who have served and suffered under them.

135. As Chief, RADM Muchow put out a letter in which he encouraged senior chaplains and commanders to evaluate chaplains on the basis of their "spirituality", which was and remains an undefined, subjective term.

136. The Navy has established organizational structures and systems, *e.g.*, Regional Chaplains,

in which senior chaplains (often liturgical) rate other chaplains, even when those chaplains are assigned to a specific DON unit or facility, rather than the commander of the base or unit on which the chaplain serves. In some cases the regional chaplain has been able to acquire control of funding for subordinate chaplains' funding allocations. One Catholic regional chaplain eliminated Protestant Directors of Religious Education ("DRE") while keeping and fully funding Catholic DREs.

137. The above systems are part of a systematic means of maintaining the Navy's illegal discriminatory procedures, policies and objectives, and ensuring Non-liturgicals are prejudiced in promotions and career opportunities.

138. It is common practice for the senior chaplain to provide fitness report input or completed fitness reports to the Commander or Executive Officer where more than one chaplain is assigned to a unit, base or ship. Such input has no basis in objective, neutral, non-ideological standards and this practice has been used by Catholic and Liturgical senior chaplains to handicap or destroy Non-liturgical chaplains' careers because commanders have little knowledge of junior chaplains' work and incorrectly assume senior chaplains are free of bias, *e.g.*, Navy San Diego Medical Center, Naples.

139. Such systems violate the First and Fifth Amendments.

140. The failure to provide objective retention criteria while emphasizing subjective evaluation violates Due Process and the Establishment Clause. [If reinstated, this claim would be common to all plaintiffs and the class.]

COUNT 7

THE NAVY HAS CREATED AN UNCONSTITUTIONAL CULTURE IN ITS CHAPLAIN CORPS CHARACTERIZED BY PERSISTENT AND OVERT HOSTILITY TO NON-LITURGICAL CHAPLAINS AND NAVY MEMBERS AND FAVORITISM TO

LITURGICAL DENOMINATIONS

141. The allegations in paragraphs 1 through 140 above are incorporated herein by reference as though pleaded in full. This count is common to all plaintiffs and the class.

142. The Navy has established a culture of manifest hostility toward Non-liturgical religious beliefs and practices in violation of the First and Fifth Amendments because of the illegal religious preference system and its resulting discrimination against Non-liturgical chaplains in many and various aspects of the CHC's personnel management decisions and processes . That culture allows the types of retaliation described in Count 12 and abuse of the selection process in Count 4 and the other abuses challenged herein.

143. Comparison of the DMDC's religious demographic data with the CHC's FGC accession goals, the CHC's recall, promotion and CADRAG policies, procedures and results, and CHC composition from FY88 to 2000 provides irrefutable evidence of the Navy's religious bias and hostility against Non-liturgical traditions and faith groups. Although the Navy (and national) membership of Non-liturgical traditions and faith groups has exceeded that of Liturgical Protestant denominations by a factor of four, the Navy's former accession goals show an inverse relationship to its demographics. In some years, the Liturgical Protestant goal was twice that of the Non-liturgical. This demonstrates the Navy's accession goals were developed on an arbitrary basis designed to hinder Non-liturgical faith groups.

144. The Navy alleges its current accession policy (post 2002) has no goals related to denomination or faith group categories. This violates the First Amendment by making the CHC a forbidden federal jobs program for clergy, rather than an accommodation narrowly tailored to meet the specific religious free exercise needs of DON personnel.

145. The Navy has no realistic, objective, secular, religiously neutral and non-ideological

standards by which to evaluate chaplains and their ministry. The above structures and systems have no valid or reliable means of ensuring religious neutrality, keeping religious animosity, bias or differences out of the rating process. The fitness rating form designed for line officers does not address, explain or identify areas of competence relevant to chaplains.

146. Liturgical Protestant and Catholic senior chaplains have purposely given some Non-liturgical chaplains lower performance ratings than similarly situated subordinate Liturgical Protestant and Catholic chaplains solely on the basis of their religious identification and beliefs, despite evidence of the Non-liturgical chaplain's superior performance. CAPT David Young, the Catholic command chaplain at Naval Medical Center San Diego, consistently rated his Catholic chaplains above non-Catholics, despite glaring deficiencies in those Catholic chaplains' performance. There are senior Catholic and Liturgical Protestant chaplains under whom no Non-liturgical chaplain has been promoted. *See* Count 7.

147. The Navy's continuation of selection board procedures that lead to, allow and promote favoritism and discrimination despite its own investigations, statistics and consultant's evaluations documenting misconduct and denominational preferences demonstrates a pervasive culture of Non-liturgical bias to which the Navy has closed its eyes.

148. The Navy has established two systems of discipline and administration, one for Liturgical traditions, and one for Non-liturgical traditions. For example:

- a. CH Drake, a Catholic chaplain, was court-martialed for violating an order but allowed to retire with full pay, while plaintiff CH Tostenson who reported Drake for violating the order was FOS; CH Soto, a Catholic, was accused of adultery but referred to the Catholic Military Ordinate for investigation and discipline, then secretly returned to active duty, was promoted and allowed to retire as a CAPT while a Non-liturgical

chaplain accused of child abuse in a divorce proceeding was administratively and punitively discharged, and not reinstated even though a civil trial found him not guilty.

b. Plaintiff Klappert was falsely accused of sexual harassment but cleared by a civil court. The Navy continued to prosecute, ignored witnesses, misrepresented what other witnesses said and forced the chaplain to retire.

c. The battleship USS Iowa's Catholic commander ("CO"), made Catholic CH Danner, a junior LCDR, a co-equal command chaplain with plaintiff CH Thompson, then a senior LCDR, a very unusual situation, contrary to Navy regulations and protocol. Count 12 ¶ cc describes the religious discrimination CH Thompson experienced on the Iowa. The Washington Times reported CH CH Danner received a letter of reprimand later for embarrassing the Navy. CH Danner was promoted to CDR and subsequently to CAPT while CH , ¶ was FOS to CDR and forced to leave the service in January 1993.

149. The CHC has retaliated against Non-liturgical chaplains who have complained about their "second class" treatment. *See* Count 12.

150. Other manifestations of prejudice against Non-liturgical beliefs:

a. Senior Catholic chaplains, *e.g.* Buchmiller, Rock, have forced Protestants to change Vacation Bible School, a traditional Protestant/evangelical activity to teach children the Bible and Protestant doctrine, to accommodate Catholics. In so doing, Non-liturgicals have been forbidden to use certain evangelical practices and phrases, *e.g.*, born again, so as not to offend Catholics;

b. Catholic and Liturgical Protestant senior chaplains have insisted on rotating chaplains through evangelical services instead of assigning a chaplain as a "pastor" for a congregation, reflecting the liturgical viewpoint that the liturgy satisfies the congregation's

worship need, rather than the Non-liturgical view that good biblical preaching, music, and praise and worship comprise the worship experience;

c. Catholic and Liturgical chaplains have restricted Protestant Sunday School material in some cases, excluding material acceptable and desirable to Non-liturgicals and, as exemplified in Naples, providing liberal religious education material offensive to many Non-liturgicals, and a pastor's duty to establish a relationship with the congregation;

d. Chaplains who protest such things have been criticized and downgraded on fitness reports, because they are not team players and/or cause division;

e. Reports of Senior Chaplain abuse or misconduct have been ignored or the investigations have whitewashed or misconstrued criminal activity. For example, the recall of CH (CDR) John Lyle as a "flight surgeon" and the violation of the Joint Travel Regulations in his recall have gone unaddressed.

f. A marine Sargent returning from deployment accused Catholic CH Soto of having an affair with his wife during the marine's deployment. The wife admitted to the affair. The Navy turned the investigation over to the Catholic endorsing agency, which concluded CH Soto was innocent, allowed Soto to leave active duty but remain in the Reserve until things quieted down. The CHC then illegally recalled Soto who had been promoted to LCDR in the Reserves and thereafter promoted him to CDR and CAPT.

151. Counts 8-10, which are incorporated here by reference, provided further evidence of the culture of bias and hostility challenged here.

152. The Navy's willful blindness to the above culture and its manifestations and practices demonstrating the Navy's and the CHC's hostility to plaintiffs violates the Constitution's Establishment, Free Exercise, Free Speech and Due Process Clauses.

COUNT 8

THE NAVY'S HOSTILITY TO NON-LITURGICAL DENOMINATIONS AND THEIR TRADITIONS HAS BURDENED PLAINTIFFS IN VIOLATION OF THE FIRST AND FIFTH AMENDMENTS AND RFRA

153. The allegations of paragraphs 1 through 152 above are incorporated herein by reference as though pleaded in full.

154. The CHC's religious discrimination and hostility towards Non-liturgical chaplains in accession, promotion and retention policies have resulted in over-representation of Liturgical Protestants and under-representation of Non-liturgicals, compared to their percentage of the religious demographics.

155. The CHC never identified faith group preferences of DON personnel prior to October 19/99. Both RADMs Muchow and Holderby testified they recognized the increasing Non-liturgical DON population, directed that more Non-liturgical chaplains be accessed, but could not explain why the actual CHC approved accession goals reflected the exact opposite, a continued emphasis on Liturgical Protestant chaplains.

156. The Navy's discriminatory policies and hostility identified in this Complaint have prevented the viewpoint or needs of Non-liturgical faith groups from being considered in Navy decisions affecting religious ministry and resources.

157. The CHC's deliberate and systematic over-representation of Liturgical Protestant chaplains from at least 1986 to the present has ensured that the free exercise of those faith groups are more than adequately met, but the under-representation of Non-liturgical chaplains limits their ability to meet DON's Non-liturgical community's religious needs by severely limiting their access to chaplains and worship services of their faith groups.

158 Non-liturgical chaplains must expend more effort to meet the needs of their faith group

members than is required by Liturgical Protestant chaplains. *See* chaplain/adherent ratios by FGC. Exhibit 20.

159. Whether the above challenged policies are deliberately motivated by faith group bias or are merely the result of gross indifference, they have produced an unconstitutional adverse and disparate impact on Non-liturgical chaplains and the DON personnel of their faith groups, deny Non-liturgical DON personnel and chaplains their Constitutional right to exercise their religion, their Fifth Amendment right to equal treatment under the law, and violate the neutrality required under the Establishment Clause.

160. The CHC's active indifference or outright hostility to Non-liturgical DON personnel's worship needs and their chaplains is exemplified by the CHC's practice of assigning to command chaplain positions chaplains who are known to be anti-Non-liturgical and anti-evangelical, and allowing them to oppress and hinder the Non-liturgical religious community and their chaplains without accountability.

- a. In October 1997, the CHC assigned CH (CAPT) Ronald Buchmiller as the command chaplain in Naples, Italy.
- b. Catholic CH Buchmiller began criticizing the senior Protestant chaplain, LCDR De Marco (now an *Adair* plaintiff) because of his evangelical preaching and ending his prayers "in Jesus name" according to his Southern Baptist tradition. CH Buchmiller told CH De Marco and others that as De Marco's rater, he would make sure DeMarco would never make CDR. CH Buchmiller fulfilled his promise.
- c. CH Buchmiller also criticized another liturgical Protestant chaplain who had taken over a charismatic Non-liturgical service because he preached classic Protestant doctrine, *e.g.*, sola scriptura and salvation by faith in Christ.

d. Members of the Naples Protestant evangelical community have testified CH Buchmiller created a climate of religious oppression and fear.

e. By 1999, at least nine English speaking Non-liturgical churches had sprung up off base whose membership was made up almost entirely of Navy personnel assigned to the Naples Navy base, driven off post by CH Buchmiller's overt hostility. There were few such churches prior to CH Buchmiller's arrival.

f. The Navy did not facilitate ministry to military members whose religious worship needs could only be met by attending off post Non-liturgical churches. Although DOD and Navy regulations provide for hiring civilian clergy when necessary to meet free exercise needs, the Navy did not employ available English speaking Non-liturgical pastors to meet Non-liturgical free exercise needs. Although these Non-liturgical pastors were willing to minister to their parishioners at no cost to the government, the Navy denied these ministers base passes to minimally secured areas of Navy housing and the Naval hospital, even to visit parishioners in the hospital.

g. CH Buchmiller greeted plaintiff John Gordy with "I guess you've heard I have a reputation for ruining evangelical careers" and proceeded to uphold his reputation.

h. CH Gordy started a charismatic/pentecostal service. In 2003-04, it had grown to the largest non-Catholic service at Naples with an average attendance of about 160 people. When CH Gordy left, the CHC provided no charismatic or pentecostal replacement. Similar problems have arisen in Rota, Spain, that has had a continuing large charismatic/pentecostal congregation.

i. CH Buchmiller shut down Bible studies in the barracks and attempted to preclude them in the housing area.

j. CH Buchmiller was followed by Catholic CH Rock, who continued to vex the contemporary Non-liturgical service and at the same time tried to shut down an evangelical service at a nearby NATO base, despite the Navy's obligation under Title 10 to provide for the free exercise needs of American military personnel assigned at Allied Forces South (AFSOUTH) (now Joint Forces Command) in Naples. Things did not improve under the successor Catholic command chaplain.

k. The Naples NSA's command's policy toward the AFSOUTH congregation was to: (i) provide chaplains who had no theological or denominational identity with the congregation, (ii) provide no sustained chaplain ministry after CH Torralva left; (iii) rotate chaplains each Sunday who had no interest in the congregation; and (iv) ignore the requests of Non-liturgicals such as CH Dufour who volunteered to become the AFSOUTH pastor. *See Poe*, ¶ 16.

l. Although the new Naples Chapel was constructed with a baptismal tub that allowed Non-liturgicals to immerse adults, the Catholic Command chaplain ordered that the water heater be deleted because "Protestants don't need a heater." This made the baptismal useless because of the cold Italian climate

161. The Navy has no procedures to identify specific Non-liturgical worship needs such as the Pentecostal/charismatic congregations at Naples, Italy, and Rota, Spain. Although these communities have been in existence for years, the Navy's response to satisfying their worship needs has been active indifference and/or hostility. *See Poe*, ¶¶ 21-29.

162. In the early 1990s, the Command Chaplain at Guantanamo Bay, Cuba, attempted to suppress the 0730 service, a Non-liturgical charismatic service, "with the avowed goal of forcing its members to attend the 'official' Protestant service", Exhibit 21, ¶ 2, contrary to the First

Amendment. The congregation successfully petitioned the Base Commander, who allowed the service to continue. The CHC's early removal of the congregation's chaplain, who opposed the suppression, shows the CHC approved of the suppression.

163. The Navy and CHC has no system to identify or positively reward Non-liturgical chaplains who transform dead congregations into vibrant ones, or who "grow" congregations. Instead:

a. Those who have these skills have been punished by poor or inadequate fitness reports or marginalized, *e.g.*, plaintiffs DeMarco, Stewart, Dufour, Wilder.

b. The attitude of many command chaplains is "go to civilian churches for your ministry needs", undermining the purpose of the CHC and showing disrespect for Non-liturgical faith groups for whom "community" and fellowship is an important part of their religious expression.

164. The above examples show how the Navy's hostility to Non-liturgical DON members and their chaplains simultaneously violates the Establishment Clause and, by burdening their ability to practice their religion and faith, the Free Exercise Clause and RFRA.

COUNT 9

THE NAVY DISCRIMINATES AGAINST NON-LITURGICAL CHAPLAINS' RELIGIOUS FREE SPEECH

165. The allegations contained in paragraphs 1 through 164 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

166. The Navy's discrimination against Non-liturgical chaplains and Navy personnel manifests unlawful disapproval of the religious speech that is inherent in their Non-liturgical tradition, practice and worship.

167. Following the distribution of RADM Iasiello's "Chief of Navy Chaplains Official

Statement on Public Prayer in the Navy”, the Secretary of the Navy signed SECNAVINST 1730.7C on February 21, 2006, formalizing RADM Iasiello’s “Official Statement.”

a. The SECNAVINST unconstitutionally established a Navy religion by defining acceptable and unacceptable religious words and concepts for chaplains to speak at ceremonies or other public events. ¶ 6.c.

b. The SECNAVINST is a formal adoption of what had become an unofficial policy, *e.g.*, numerous plaintiffs and members of the class, as well as chaplains outside the class, have been criticized or penalized for praying in accord with their faith traditions.

c. The SECNAVINST illegally delegated to commanders authority to regulate or censor a chaplains prayer. ¶ 6.

d. While the SECNAVINST stated a chaplain may elect not to participate in a ceremony that requires a non-sectarian prayer without reprisal, *id.* ¶ 6.c., the practical effect of such a provision is to undermine the chaplain’s role in the unit or chapel and to coerce the compromise of faith beliefs since a chaplain is rated on “team work” and not participating in such ceremonies is obviously not working on the team.

e. Although Congress directed 1730.7C be withdrawn, the Chief’s “Official Statement”, the Chaplain School’s previous teachings restricting religious free speech at public ceremonies, reinforced by command chaplains’ hostility to evangelical Non-liturgical beliefs, have created a culture of hostility which still emphasizes “the Navy way to pray”, chilling plaintiffs’ free exercise and free speech rights.

168. The history of the above Navy polices and practices indicate they are response to the “heckler’s veto”, a concept the First Amendment forbids the Navy from adopting.

169. The Navy policy reflected in the SECNAVINST above is a radical departure from the

Navy's previous religious tradition and history and shows hostility to the Free Speech rights of Navy chaplains in general and to Non-liturgical chaplains in particular. From the earliest days of the Navy, chaplains prayed an "evening prayer." In 1860, Congress passed what is now 10 U.S.C. § 6031, allowing chaplains to conduct services according to the church of which they are members, in response to questions whether prayers had to follow the Episcopal Common Book of Prayer, which had been the norm. Congress considered prayer to be the choice of the chaplain according to his faith tradition.

170. Senior liturgical and Catholic chaplains have criticized and/or retaliated against plaintiffs, *e.g.*, Belt, DeMarco, Johnston, Rush, Thyron, Torralva, and other Non-liturgical chaplains for preaching or following the tenants and traditions of their faith in violation of the Free Exercise and Free Speech Clauses, the provisions of 10 U.S.C. § 6031 which allows chaplains to conduct public worship according to the customs and norms of the churches of which they are members, and Naval Regulation 0817 which mirrors § 6031.

171. The persistent anti-Non-liturgical culture which produced SECNAVINST 1730.7C and the hostility it reflects violate the rights guaranteed by the Establishment, Free Exercise and Equal Protection Clauses, and RFRA.

COUNT 10

THE NAVY'S HISTORIC POLICY OF PROMOTING ONLY A "GENERAL PROTESTANT" TYPE OF SERVICE AND RESTRICTING OTHER FORMS OF NON-LITURGICAL RELIGIOUS SERVICES VIOLATES THE FIRST AND FIFTH AMENDMENTS AND RFRA

172. The allegations in paragraphs 1 through 171 above are incorporated herein by reference as though pleaded in full.

173. In violation of the First Amendment's Establishment, Free Exercise and Free Speech

Clauses, the Navy has historically tried to established a *de facto* liturgical or “high church” “General Protestant” religion. The Navy’s mandated liturgical “General Protestant” service, disfavoring “low church” forms of worship, has attempted to squeeze all non-Catholic Christian servicemen and women (high and low church) into a single liturgical worship mold, including personnel from plaintiffs’ Non-liturgical faith groups, while ignoring or actively hindering the religious needs of Non-liturgical personnel.

174. Navy senior chaplains have (a) removed some plaintiffs from preaching or conducting religious services solely because they were Non-liturgical chaplains, *e.g.*, Belt, Wilder, and (b) have hindered, opposed or closed Non-liturgical worship services, *e.g.*, Bailey, Lavelle, Stewart, Thyron, even when such alternatives to a General Protestant Service were well attended and in many cases exceeded attendance at the liturgical General Protestant service.

175. Non-liturgical chaplains have been criticized and berated for preaching and teaching basic truths of the Christian faith, basic Protestant doctrine and their specific religious tradition, *e.g.*, Belt, Blair, DeMarco, Dufour, Kirk, Stewart, Thyron. *See* count 12.

176. Despite significant differences in theology and worship practices, the CHC treats all Non-liturgical chaplains as fungible. Plaintiff Dufour pastored the Naples, Italy, Non-liturgical contemporary Protestant worship service in which contemporary music and musicians were important parts. The Catholic command chaplain planned to replace CH Dufour with a Non-liturgical chaplain whose faith group did not allow using musical instruments in worship. Poe, ¶¶ 17-19. Despite CH Poe’s personal efforts to ensure the Pentecostal/Charismatic congregation had a like faith replacement when CH Gordy left, the CHC did nothing and no appropriate replacement chaplain for the congregation was provided. *Id.* ¶¶ 13, 22, 24-27.

177. The above examples show the Navy’s hostility to Non-liturgical DON members and their

chaplains simultaneously violates the Establishment Clause and, by burdening their ability to practice their religion and faith, the Free Exercise Clause and RFRA.

COUNT 11

CONSTRUCTIVE DISCHARGE OF CERTAIN PLAINTIFFS

178. The allegations in paragraphs 1 through 177 above are incorporated herein by reference as though pleaded in full.

179. The Navy's failure to provide objective criteria for measuring chaplain performance in its fitness reports allows supervisory chaplains and commanders to use subjective criteria unrelated to chaplain ministry, which facilitates discrimination.

180. The CHC has created a hostile environment, *see, e.g.*, Counts 2-5 and 10, and has used the realities of the up or out promotion system and separation process to make working conditions intolerable for many of these plaintiffs and other Non-liturgical chaplains who (i) after being FOS, left the Navy rather than endure more hostility, abuse, family stress, and humiliation; (ii) when eligible, chose to retire under the TERA or other programs lest they be separated from the Navy with nothing; or (iii) left with no reasonable alternative except to leave the active Navy or retire. Such separations or retirements were coerced and/or the products of hostile environments and constitute constructive discharges.

181. All plaintiffs who had to retire due to FOS because of statutory time in service or grade limits and the following plaintiffs claim constructive discharge: Blair (95), DeMarco (99), Heinke, Frank Johnson, Klappert, LaValle (98), Nichols (TERA), Quiles, Rush, Spalding (TERA), Swanson (TERA), Watson (TERA), Wilson (TERA).

COUNT 12

ILLEGAL RETALIATION

182. The allegations in paragraphs 1 through 181 above are incorporated herein by reference as though pleaded in full.

183. The Navy and/or CHC has sought to illegally retaliate, punish, harm or otherwise deprive some of these plaintiffs because they exercised their constitutional, statutory and regulatory rights and objected to burdens on their career opportunities.

a. Such retaliation and its harmful consequences are in response to plaintiffs' exercise of their rights in bringing this lawsuit and/or previously defending their right and responsibility to represent their faith group and meet the religious needs of Non-liturgical DON personnel, or exposing CHC or Navy misconduct, prejudice, bias, illegality and duplicity.

b. Whether the retaliation was the result of individuals acting on their own or responding to real or imagined slights, denominational bias, "payback" for exposing wrongdoing, or advancing the CHC's policy or protecting its pro-liturgical culture is immaterial because the officials so acting were acting in their capacity as naval officers, the Navy and the CHC was aware of the potential for abuse of delegated powers and denominational bias, and failed to prevent or remediate such retaliation or abuse.

184. The following are specific examples of retaliation.

a. CH Arnold. The CHC and Navy retaliated against CH Arnold because he and another chaplain interceded with the commanding officer at Mayport, FL to have CH Eis, the Catholic command chaplain psychologically evaluated for his fitness for service because of Ch Eis's strange behavior. Catholics accused CH Arnold of having "destroyed Charlie's career." Subsequently, an acquaintance notified CH Arnold that CH (CAPT)

Oddo, a Roman Catholic, made a comment at a Senior CHC leadership¹⁹ meeting that “There is no place in the navy for Rich Arnold.” The CHC failed to select CH Arnold for CDR. Given the Navy’s policy of reserving a promotion board seat for Catholics coupled with the challenged secret “zeroing out” procedures, it is apparent the CHC retaliated against CH Arnold for attempting to help CH Eis or slighting a Catholic.

b. CH Belt. The Navy and its CHC officials retaliated against CH Belt in numerous ways because of his actions representing his Non-liturgical faith group. Originally endorsed as a liturgical United Methodist, CH Belt switched his endorsement to the Non-liturgical Church of the Nazarene before entry on active duty. While stationed on Okinawa from 1991 to 1993, his Liturgical Protestant rating chaplain gave him a poor fitness report after CH Belt failed to support his rater’s selling tickets to the rater’s prayer breakfasts. This same Liturgical Protestant reprimanded later CH Belt for preaching that men who call themselves Christians should live as Christians and gave CH Belt a low mark on his fitness report.

Assigned to the Navy’s San Diego Medical Center, his Catholic Command chaplain (i) excluded CH Belt and the other Non-liturgical chaplains from decisions and meetings that affected him and other chaplains until after decisions had been made at exclusively Liturgical chaplain meetings; (ii) gave Catholic and Liturgical Protestant chaplains with poor work output higher fitness reports than CH Belt and other Non-

¹⁹ Catholic Chief RADM O’Connor allegedly began the practice of having Catholic chaplains meet regularly meet and discuss what was happening. It has been reported the frequent meetings of Catholics during which incidents of perceived actions against Catholic interests were exchanged. The presence of a Catholic on every board and the secret voting procedures enabling one member to zero out a candidate ensured any action against a Catholic could have career implications and any perceived offender of Catholic interests would not receive a fair hearing.

liturgicals who carried the work load. This resulted in CH Belt's non-selection for promotion to LCDR by the fiscal year ("FY") 1999 and 2000 chaplain promotion boards.

The Navy and CHC further retaliated against CH Belt for becoming a plaintiff in this litigation. As a result of injuries received on active duty complicated by Navy medical malpractice, CH Belt became an invalid, walking only with great difficulty and pain.

Although having started the process for a medical board to evaluate the CH Belt for medical retirement, the Navy, separated CH Belt for FOS in March 2006 before completing the medical evaluation board causing CH Belt and his family great distress and hardship.

c. CH Byrum. The Navy and CHC retaliated against CH Byrum by selecting him for involuntary retirement through the FY96 SERB ,effective July 31, 1996, before he was considered for promotion to CAPT, while retaining numerous chaplains who had multiple FOS to CAPT and CDR and little time remaining for service. For example, the chaplain with the most FOS (CH Palmer) had about one year active service left, contrary to the Secretary's SER retention criteria emphasizing future potential for service.

CH Byrum believes the CHC selected him SER because his outstanding record as a Non-liturgical chaplain and his prior service was a threat to the Liturgical domination of the CHC. In other words, the CHC liturgical hierarchy retaliated against him because his competence and effective ministry were a threat to the liturgical leadership.

d. CH Carson. The Navy and CHC retaliated against CH Carson for changing her endorsement from United Methodist to CFGC by the CHC's (i) unreasonable delay and changes in bringing her to active duty after her endorsement change and after she had quit her civilian job based on a specific reporting date and ship assignment (USS Simon Lake)

that the CHC had previously given her as a United Methodist; (ii) giving her assignments that made her non-competitive for promotion; failing to select her for promotion to LCDR; and (iii) causing economic and other injury by unreasonably delaying her discharge orders and interfering with her opportunity to seek commissioning in the Army Chaplains Corps.

e. CH DeMarco. The Navy and CHC retaliated against CH De Marco by placing him at Naples under a Catholic Command chaplain with an established record of discrimination against Non-liturgicals, a known career ending assignment for Non-liturgicals. The Command chaplain, CH Buchmiller, criticized CH De Marco for ending his prayers “in Jesus name”. When CH De Marco insisted on praying in accordance with his beliefs and religious tradition as allowed under Navy regulations and federal statute, CH Buchmiller promised to end his career, rated him in a way that made him non-competitive for promotion, and forced CH DeMarco to retire early. This rating was based on faith group prejudice and bias and deliberately ignored CH De Marco’s service and the fact that he had grown the Naples Protestant congregation from 25 to over 200, making it the largest Protestant worshipping community in the Navy in Europe. His evaluation also ignored the large corresponding increases in the religious education and children’s programs due to CH De Marco’s efforts.

f. CH Doney. The CHC retaliated against CH Doney the first time in 1971, denying him a chaplain’s appointment because he was a graduate of Bob Jones University. It further retaliated against him by denying his many requests for active duty and failing to promote him to LCDR on active duty and to CDR in the Reserves, despite numerous short term active duty assignments. CH Doney believes his FOS was retaliation by the Catholic member of the board because he baptized a woman who asked to be baptized by

immersion on one of his short tours to Adack Island in the Aleutians to meet a need for a Protestant chaplain. The Navy base's Catholic priest accused CH Doney of stealing sheep because the lady occasionally attended Mass. The frequent meetings of Catholics and presence of a Catholic on every board ensured he would not receive a fair hearing, either on active duty or in the Reserves.

g. CH Dufour. CH Dufour complained to his Congressman about the prejudice and oppression against Non-liturgical DON personnel at Naples, Italy. His Catholic Senior Chaplain, CAPT Rock, the source of oppression, retaliated with a poor fitness report. The succeeding Naples command chaplain, Catholic CH (CAPT) Malene, unjustifiably denied CH Dufour an end of tour award for his work in Naples and then called his new command chaplain, Catholic CH Keane, to give CH Keane a bad report on CH Dufour. Although CH Keane has praised CH Dufour's work, he told the USS NIMITZ's commander CH Dufour was not ready for promotion to CDR, although he provided CH Dufour no counseling about performance shortcomings. After a lengthy discussion, the NIMITZ commander told CH Dufour, "When you're labeled 'damaged goods', there's not much you can do about it."

h. CH Hamme. The Navy and CHC retaliated against CH Hamme by not selecting him for LCDR in 1991 and 92 because of his Non-liturgical denomination's beliefs combined with his status as a Naval Academy graduate, excellent record as a Marine aviator, outstanding reports as a chaplain LT where he was placed in a LCDR billet supervising other LTs, his selection by the CHC for post-graduate education in an exclusive and very prestigious program, and the quality of his record as indicated by the Deputy Chief of Chaplain's report to the GAO following his first FOS, made him a threat

to the liturgical hierarchy.

i. CH Harkness was illegally denied affiliation with a Reserve unit when he left active duty after confronting through the Inspector General the CHC's denial of information about his post-graduate school follow on assignment. He subsequently filed a complain against the misrepresentation of witnesses by the investigating officer. The NIG concluded the CHC had unlawfully withheld his affiliation, but did not remedy his lost time or pay. He was denied promotion to CDR in the Reserves because an openly hostile chaplain was on his selection board, but was subsequently promoted after filing a complaint. After selection for an active Reserve assignment in Europe, he was denied active duty for training despite being picked for such a position by the APPLY board, the European command's request for him and existence of the need. The Navy then reorganized his unit, eliminating his active duty billet and retaining all others in pay billets except him. CH Harkness was illegally denied promotion to Captain by the FY07 selection board composed contrary to Regulations, a fact the Navy recognized only after he filed suit.

j. CH Heinke. The Navy and CHC retaliated against CH Heinke by using the secret selection board procedures to ensure CH Heinke was FOS to CDR in FY93 and 1994. The retaliation was instigated by (i) the Chief, RADM White, because Gen. Krulak, Commandant of the Marine Corps, liked CH Heinke, respected both his ministry, administrative and leadership skills and intervened to keep CH Heinke at Quantico after the liturgical Command chaplain was relieved for cause and misconduct; (ii) because CH Heinke was one of three Non-liturgical chaplains at Quantico who were instrumental in bringing stability after the Quantico liturgical Command chaplain was relieved and Gen.

Krulak placed them in positions of authority rather than senior liturgical chaplains; and (iii) CH Heinke's stellar record indicated he was a potential threat to the continued and future CHC liturgical leadership. CH Heinke's FOS was RADM White's perverted means of retaliation against LTG Krulak and the Liturgical hostility toward successful evangelicals like CH Heinke.

The CHC further retaliated further by assigning liturgical CH Mike Burt as the command chaplain at Quantico with the mission to make sure CH Heinke did not get promoted after his first FOS. CH Burt marked down CH Heinke's fitness report one letter grade, ensuring CH Heinke would not be selected.

k. CH Frank Johnson. The CHC retaliated against CH Johnson for the testimony he gave to DOD IG and NIG investigators under oath concerning the FY97 Chaplain CDR promotion board for which he was the recorder. The investigators were examining denominational prejudice and misconduct allegations on the FY97 and 98 Chaplain CDR boards. He was considered for promotion to CAPT and FOS subsequent to his testimony. Because of his outstanding record as compared to others who were selected, there is no explanation for his FOS other than retaliation for providing embarrassing information about the board.

l. CH Mark Johnston. The CHC retaliated against CH Johnston by not allowing him to continue past his initial three year tour (1987-80) because of his charismatic, Non-liturgical faith as reflected by his CFGC endorsement. The 2d Marine Division Command liturgical chaplain, CH Krabb, evidenced this discriminatory motivation and hostility by describing CH Johnston as a member of a "splinter sect" and telling him, "You preach the Gospel too much", berating him, speaking demeaningly about Charismatic ministry in

training sessions and saying those who believed what Charismatics believed could leave the ministry. CH Krabbe became very jealous of CH Johnston's local radio ministry that he performed off duty and off post, and made sure CH Johnston was not allowed to continue on active duty despite excellent fitness reports from his Marine Battalion Commander.

m. CH Kirk. The CHC retaliated against CH Kirk through his Catholic command chaplain, CH O'Brien, who gave CH Kirk poor fitness reports because he increased chapel attendance by 50% resulting in he assignment to another chapel where he again increased attendance. Catholic CH O'Brien gave superior ratings to other Catholics but graded down CH Kirk and other Protestants for no just reason.

n. CH Klapach. The Navy allowed Catholic CH Kuhn, as a board member, to retaliate against CH Klapach for leaving the Catholic Church and becoming a Non-liturgical Pentecostal in the Assemblies of God faith group when CH Klapach was an enlisted sailor and CH Kuhn was his former Catholic priests. The retaliation continued after he was promoted to CDR when (i) the CHC denied him promotion to CAPT after he objected to being placed under a junior Catholic chaplain by his Catholic commander at the Puget Sound Naval Shipyard and (ii) the CHC selected him for SER.

o. CH Klappert. CH Klappert believes the CHC and Navy retaliated against him because of his involvement in the events surrounding the relief of the Quantico command chaplain for misconduct and his opposition to religious oppression by liturgical chaplains at Quantico and other places. Assigned to the Portsmouth Naval Yard after Quantico, he experienced great difficulty with a female organist and music director who caused division in the congregation and other problems. She filed a complaint alleging

discrimination and harassment against CH Klappert before he could terminate her. A civilian judge found the allegations unsupported and dismissed them but the Navy continued to investigate the charges. The resulting investigation only interviewed six of the 16 witnesses CH Klappert submitted who would verify the falsity of the allegations and perverted the testimony of those who had made statements so the meaning was entirely opposite to the witnesses' testimony. It became apparent to CH Klappert that his commander had been told supporting CH Klappert was not in the base commander's career interests and faced with financial ruin should he continue to fight the allegations, he resigned.

p. CH Kohlmann. The CHC retaliated against CH Kohlmann by failing to select him for LCDR for expressing his view of certain subjects based on his understanding of scripture as evidence by his CAPT senior chaplain that "the Navy CHC did not need any prophets" and "this was Navy CHC policy," not just the senior Chaplain's.

q. CH Lancaster. The CHC and Navy retaliated against CH Lancaster deliberately or through gross indifference and incompetence by obviating his four attempts to make sure his record was complete before being considered by the FY 97 CAPT board as described in his individual description of his background and harm. The Navy lied to him about the completeness of his record when he asked prior to the board and subsequent boards. This retaliation was in response to his strong record which presented a strong threat to the CHC's Liturgical leadership. His protected activity was preaching and ministering in accord with his faith group in such a way that commanders and other personnel recognized his competence, sincerity, integrity and devotion to duty and provided fitness reports that showed he was entitled to promotion.

r. CH Looby. The Navy retaliated against CH Looby by the FY03 CAPT board's failure to select him despite his outstanding record. The CHC and RADM Iasiello allowed a rumor to circulate among the CHC leadership that he had been injured on active duty, was ineligible for promotion and had performance problems.

s. CH Marsh. The CHC and Navy retaliated against CH Marsh by failing to select him for LCDR. The basis for the retaliation was explained by his initial Command chaplain, who stated that CH Marsh was "the wrong sex, the wrong color and the wrong religion." The CHC's retaliation was further in response to beginning an alternative Non-liturgical worship service with two other Non-liturgical chaplain LTs, Michael Lavelle and Robert Yourek, that became very successful despite being restricted by the command chaplain to an unreasonable time (7:00 am) and still being required to participate in the liturgical General Protestant service.

The CHC retaliated further through CH Ha who (i) created conflicting schedules between CH Ha's demands and CH Marsh's unit commander's requirements and (ii) expected CH Marsh to support CH Ha rather than his CO. CH Ha promised CH Marsh he would make sure CH Marsh would never be promoted and explained that chaplain promotion boards, controlled by Liturgical chaplains, were tools to keep Non-liturgical chaplains in line and subservient to the senior chaplains rather than their unit commanders to whom they were assigned and accountable for ministry. This is another example of the well known CHC's truism, "the line may rate you, but the CHC promotes you" and it would not allow any challenge to its corruption.

The CHC further retaliated by assigning CH Marsh to the USS BELLEAU WOOD under fraudulent circumstances, involuntarily placing him on a two year tour separated

from his family after his FOS and delaying his separation for no legitimate reasons except to harm him further.

u. CH Denise Merritt. The CHC and Navy retaliated against CH Merritt by assigning her to serve under CH Jane Viera, who despised Non-liturgicals, and failing to select her for LCDR. The motivation for retaliation was CHC hostility to her Charismatic faith and her involvement in the circumstances surrounding the relief for cause and misconduct of the liturgical Command chaplain at Quantico, VA. She was one of three Non-liturgical plaintiffs, *see* CHs Heinke and Klappert *supra*, against whom the CHC liturgical leadership retaliated because Gen Krulak relieved the liturgical Command chaplain and relied on Non-liturgical chaplains to restore effective ministry to the base. CH Merritt ministered to the relieved chaplain's battered wife. At Bethesda, CH Merritt's fitness reports cited shortcomings for which she had received no prior notice or counseling, and her efforts to correct or challenge the ratings were ignored or rebuffed.

v. CH. Mitchell. The CHC and Navy retaliated against CH Mitchell by not selecting for CDR despite his outstanding record and career through RADM Iasiello, the president of the 2001 CDR board. RADM Iasiello, when director of the Chaplain School, had supported a female chaplain candidate's unsupported and false allegation that Dr. Mitchell had sexually harassed her during an interview required for the chaplain commissioning program despite an investigation proving his innocence. Then CAPT Iasiello indicated to CH Mitchell that he believed the allegations and would find a way to end Dr. Mitchell's career, a promise he kept.

w. CH Moreno. The CHC and Navy retaliated against CH Moreno because his Catholic command chaplain CAPT Rock thought CH Moreno, a Hispanic pentecostal,

should have been Catholic because he was Hispanic. This retaliation took the form of a series of degrading and insulting incidents. CH Rock gave CH Moreno fitness reports that made him non-competitive for CDR. CH Moreno has FOS to CDR numerous times. No pentecostal chaplain who worked for CAPT Rock has been promoted. CH Lesak, another Catholic command chaplain who followed CH Rock told CH Moreno, "I don't want anything to do with you because you have been passed over" and treated CH Moreno with disrespect and disdain, further insuring CH Moreno would never be promoted.

x. CH Nichols. The CHC and Navy retaliated against CH Nichols because he changed his endorsement from the United Methodist Church (UM), a Liturgical denomination, to CFGC, an endorsing agency for charismatic Non-liturgical churches and fellowships, just before the FY93 CDR promotion board. This is evident by RADM Muchow's visit to Whitby Island, Washington, after CH Nichols changed his endorsement to CFGC. RADM Muchow upbraided CH Nichols because he did not believe in infant baptism. This was confirmed by a senior Methodist chaplain who the UM endorser had asked by to contact CH Nichols. The UM senior chaplain said, "You understand what its all about, don't you? It's all about accessions. The more evangelicals [*i.e.*, Non-liturgicals] on active duty, the fewer Methodists get on active duty."

y. CH Roman. The CHC and Navy retaliated against CH Roman by failing to select him for LCDR because he challenged the CHC's favoritism and the CHC leadership's animosity against his endorsing agency, CFGC, for suing the Navy over its religious prejudice and his challenge to the preference given to FOS Catholics in retentions and promotions. After learning CH Roman was endorsed by CFGC, his command chaplain said, "Oh, you're one of those troublemakers," referring to the fact that CFGC had sued

the Navy over religious discrimination. CH Roman filed an official complaint on the USS KITTY HAWK because a Catholic priest allowed to remain on active duty despite numerous FOS was selected for promotion to LCDR.

z. CH Roysden. The CHC and Navy retaliated against CH Roysden by denying his selection for CDR in FY 98 because he was Charismatic, he challenged his Catholic Command chaplain at San Diego Medical Center, CH Young, and filed a complaint against CH Young for retaliation. Just before leaving Japan for his first sea tour, the Pacific Fleet Chaplain visited his ship and informed its captain CH Roysden belonged to an unknown faith group and the Fleet Chaplain expected that CH Roysden would have to be replaced in a few months. Other Navy chaplains told him he had made a mistake changing his endorsement from Methodist to CFGC and that it would hurt his career if he did not get out of "that group." His senior chaplain at Pearl Harbor, commenting on those who attended a Charismatic service on the base, told CH Roysden that, "People who believe like that have no place worshiping on base and chaplains from those groups shouldn't even be in the Navy."

At San Diego Medical Center, CH Roysden's Command chaplain Catholic CAPT Dave Young placed junior liturgical chaplains in jobs to which CH Roysden should have been assigned, always ranked Catholic chaplains number one despite their demonstrated incompetence, awarded higher ratings to less qualified Catholic and liturgical chaplains and disregarded or frustrated the efforts of other commanders or responsible staff personnel to recognize CH Roysden's outstanding service in very difficult situations, e.g., Korean Airlines crash on Guam, and retaliated when CH Roysden objected. CH Young further retaliated by removing CH Roysden as deputy and other positions of all authority

because CH Roysden provided counseling to a female chaplain who raised allegations of sexual harassment with EO against CH Young, The EO investigation later validated CH Roysden's allegation of reprisal.

The Navy further retaliated by denying CH Roysden a complete and unbiased investigation of his retaliation complaint against CH Young. The investigator investigating CH Roysden's allegation of CH Young's retaliation, failed to interview CH Roysden's corroborating eye witnesses, allegedly on orders from someone responsible for supervision of the investigation.

The Navy further retaliated against CH Roysden by denying his 2002 request to the Board of Correction for Naval Records concerning his FOS. The BCNR said it recognized the appearance of discrimination, retaliation, and a hostile work environment, but it felt these did not impact his fitness reports and his chances for promotion, an absurd statement on its face.

aa. CH Scott. The CHC and Navy retaliated against CH Scott by placing him in non-competitive billets and denying him promotion to CDR because he expressed a theological view point, his belief in demons, his treatment by his senior liturgical chaplain, CH Hier, and his filing a UCMJ Article 138 complaint against Ch Hier for ordering a psychiatric evaluation because CH Scott had mentioned demons in a private conversation.

bb. The Navy retaliated against CH Stewart by giving him low fitness reports, short notice reassignments and denying his selection to CDR because: (1) he refused to reveal confidential communications about problems in his command and thier information sources while assigned to the Coast Guard; (2) he prayed according to his faith tradition and objected when told to stop while assigned to Great Lakes Naval Training Center; (3)

he joined the chaplains' lawsuit and became active in CHC reform efforts; (4) he testified in support of proposed legislation reversing a Navy regulation restricting sectarian prayer; and (5) spoke publicly about Navy prejudice against Non-liturgicals.

cc. CH Thompson. The Navy and CHC retaliated against CH Thompson by failing to select him for CDR in 1991-92 because he sought to address leadership problems, and the divisive practices and non-cooperation of the junior Catholic chaplain, CH Danner, on the battleship USS Iowa. He sought guidance from his command chaplain who then reported CH Thompson's effort to the Iowa's Catholic CO who then reprimanded CH Thompson. The Navy's retaliation is further evidenced by the CO making junior Catholic chaplain, CH Danner, co-command chaplain on the Iowa contrary to Naval regulations and tradition, and other incidents and humiliations by the Iowa's CO. The Navy's preferential treatment of CH Danner, despite his receiving an official Letter of Reprimand for attacking the Iowa dependant survivors, while failing to select CH Thompson for CDR shows the influence of the liturgical CHC leadership and Catholic control of the promotion process.

dd. CH Thyron. The Navy retaliated against CH Thyron because of his Non-liturgical faith by assigning him to Bethesda Naval Hospital where his command chaplain was CH Joan Vieira, a female, Liturgical Protestant with a reputation for hostility towards male and Non-liturgical chaplains. CH Vieira fought every attempt by CH Thyron to minister to the sailors, marines and families assigned to the Hospital, criticized CH Thyron because he was "too Christological," *i.e.*, too centered on Christ, and preached too long. CH Vieira undercut CH Thyron's stature and status within the chapel community through such things as telling jokes to the congregation about an "incompetent male

preacher” just before he was to preach. As justification for giving him low fitness reports, CH Vieira told CH Thyron, “you’re talented and could make much more money as a civilian.” This assured his FOS to LCDR in 1999 and 2000, despite his excellent record prior to CH Vieira and his selection to postgraduate school.

ee. CH Torralva. The Navy retaliated against CH Torralva by failing to select him to CDR by the FY99 CDR Board and numerous other incidents which guaranteed his continued FOS. The basis of the first retaliation was his religious faith group, his Spanish ethnic background which offended many Catholic chaplains, and his outstanding record which included chaplain for the Marine One Squadron which flies the presidential helicopters, his selection for post graduate school and being scheduled to fill a CDR’s billet at COMFAIRMED Headquarters in Naples, Italy, immediately before his first FOS. At COMFAIRMED, he inspected command religious programs as part of his responsibilities. He caused controversy when he correctly reported problems in programs and chapels run by Catholic command chaplains. In response to a directive from his superiors, CH Torralva, also reported serious leadership problems at Naval Support Activity (“NSA”), Naples, under CAPT Buchmiller, the Catholic Command chaplain, including anti-evangelical attitudes and prejudice. Shortly afterwards, the Navy reassigned CH Torralva to NSA, working under CAPT Buchmiller, the same Catholic Command chaplain he had reported for poor leadership. CAPT Buchmiller’s Catholic replacement, CAPT Rock, did not use CH Torralva as the Naples Deputy Command chaplain although he was the next senior chaplain as is the Navy’s custom and practice.

CH Rock criticized CH Torralva’s Spanish heritage and further retaliated against CH Torralva because he resisted CH Rock’s efforts to close a Non-liturgical, evangelical

congregation at AFSOUTH, a NATO community in Naples the Navy was required to support.

The NSA Commander and CH Rock further retaliated against CH Torralva because he mentioned in a sermon on parental responsibilities the NSA CO was planning to open a teen-clinic to dispense birth control without the NSA parents consent or knowledge. The revelation embarrassed the CO because the COMFARMED Command and NSA community was not aware of the plan. Buchmiller and Rock gave CH Torallva low fitness reports.

ff. CH Tostenson. The Navy and CHC retaliated against CH Tostenson because he reported his Patuxtant Naval Air Station Catholic Command chaplain, CDR Carl Drake, for violating a court's non contact order after CDR Drake's adopted son filed child molestation charge against CDR Drake. CDR Drake was subsequently court-martialed for violating the court order. The Navy's policy of reserving a selection board seat for at least one Catholic allowed the Catholic network to retaliate against CH Tostenson.

gg. CH Twamley. The Navy retaliated against CH Twamley by failing to select him for promotion by the FY99 and 00 CDR boards. The retaliation was based on his endorsement by the Assemblies of God, a pentecostal denomination. At least one of the board members had a reputation of hostility toward pentecostal chaplains; only one of five pentecostal chaplain promotion candidates was selected in FY99 and he was a minority.

hh. CH Watson. The Navy retaliated against CH Watson by failing to promote him to LCDR because he offended the 6th Fleet Catholic chaplain when a religious program specialist who knew a high ranking Catholic Cardinal in Rome invited the Cardinal to visit the ship when it made a port call at Naples, Italy. The Navy further retaliated against him

by discharging him in 1993 before the Physical Evaluation Board was complete after treatment for a medical condition requiring surgery that precluded his further service.

ii. CH Wilder. The Navy and CHC retaliated against CH Wilder in numerous ways that resulted in his failure of selection to CDR in 1999 and 2000 and then kept his record uncompetitive. In Okinawa in June 1992, CH Williams, a Liturgical superior not in CH Wilder's chain of command, told CH Wilder to change his Non-liturgical worship service into an Episcopal service, which was completely foreign to his religious tradition and individual faith. When CH Wilder did not, CH Wilder's supervisory chaplain then allowed Episcopal CH Williams to "fire" CH Wilder in front of CH Wilder's Non-liturgical Baptist congregation. CH Williams complained when CH Wilder started his own Baptist service that grew larger than CH Williams's Episcopal service and promised he would make sure CH Wilder would never get promoted above LCDR. CH Wilder testified other chaplains asked questions about what happened on Okinawa, showing CH Williams had attempted to ruin CH Wilder's reputation in the CHC to make sure he was not promoted.

After the *Adair* litigation was filed and following and CH Wilder's appearance on Fox News describing his own religious prejudice experience, the Navy and CHC further retaliated against CH Wilder. The Catholic acting command chaplain, CH Scordo, improperly reassigned him from a CDR billet to a LTJG position and gave him other demeaning duties and a damaging fitness report. CH Scordo said he was following orders from an unnamed superior. CH Wilder filed an IG complaint against CH Scordo for retaliation which whitewashed the reassignment.

jj. CH Wilson. The Navy and CHC retaliated against CH Wilson by not selecting

him for CDR because in 1983 he filed a religious discrimination charge against a liturgical command chaplain and then would not change the claim to racial discrimination as his superior chaplains urged him. They told CH Wilson that if he expected to make the Navy a career, he should drop his religious discrimination charge or change it to a racial discrimination charge. On principle CH Wilson refused to do so. The CHC further retaliated against him because he changed his endorsement to CFGC in 1986.

kk. CH Xenakis. The Navy and CHC retaliated against CH Xenakis by filing to select him for promotion by the FY96 and 97 CDR Selection Boards. The retaliation was based on the animosity of senior Catholic chaplains because he failed to join an effort by two Roman Catholic chaplains to their attempt to get the senior chaplain, a Methodist, relieved for cause. He was warned by one Catholic he would be remembered as “not a team player.” The CHC further retaliated against him because he rejected taskings and guidance from the Chief and the Chief’s office that were at sharp variance with those of his own command which was located close to the Chief’s Office in Washington, DC.

1856. The above do not purport to cover all incidents of retaliation within the class or among the plaintiffs.

186. The above policies and actions violate plaintiffs’ constitutional and statutory rights and Navy and DOD regulations.

COUNT 13

FRAUDULENT CONCEALMENT OF AND/OR ILLEGALLY COVERING UP THE EVIDENCE OF PLAINTIFFS’ CAUSES OF ACTION

187. The allegations in paragraphs 1 through 186 above are incorporated herein by reference as though pleaded in full.

188. All selection board members and support personnel take an oath not to divulge the board proceedings unless he or she is released from that oath by the Secretary of the Navy or “higher authority”. This secrecy is reinforced by regulations, the Uniform Code of Military Justice, and statute.

189. The records of personnel being considered by promotion boards are protected from disclosure or exposure. A chaplain who is not selected by a promotion board cannot compare his personnel file and fitness reports with those of chaplains who have been selected, or know for certain which selectees met promotion considerations or criteria.

190. The causes of action for violations of plaintiffs’ rights in and through the chaplain promotion and SER process are self-concealing.

- a. The secretive and restrictive nature of the Navy promotion system ensures that misconduct or illegality in the chaplain selection board process is easily concealed from the victims and other outsiders. This is shown by the DOD and NIG investigations into the FY 97-98 chaplain CDR promotion boards, the FY00 CAPT board and the FY08 CAPT board.
- b. Any challenge to the “perception” of misconduct in the promotion process would have to overcome the presumption of regularity, which would in most cases be impossible, given the secret nature of board proceedings.
- c. The ability of the Chief, senior chaplains and the Navy to retaliate against “whistle blower” board officials is a further disincentive to bring wrongdoing to light as shown by the fact all investigations of chaplain board misconduct have originated from outside the board, although board personnel report misconduct when asked by investigators. *See also* ¶ 202 *infra*.

191. The policy allowing the Chief to approve all chaplain promotion board members, a power he still has, and his power to retaliate or stifle dissent minimizes the probability board misconduct or other acts of favoritism would/will be brought to light, such as when a board president champions certain candidates for reasons other than the candidates' records, when faith group has become a promotion consideration, or improper criteria were considered. The DOD and NIG investigations into the FY97 and 98 chaplain CDR promotion boards provide evidence the system concealed these improprieties.

192. The Navy, and the CHC in particular, has lied to, misrepresented, or otherwise misled plaintiffs and others who have raised questions about the appearance of quotas, faith group prejudice, and/or the fairness or objectivity of the chaplain promotion and SERB processes.

193. Senior CHC officials have consistently maintained that faith group has no part in chaplain promotions, holding all chaplains, regardless of their faith group, compete for promotions on a level, merit based, playing field. These senior chaplains have known that (a) faith group was a promotion factor and some promotions were based on denominational considerations; (b) personal knowledge of the candidate or other non-merit based criteria was more important than military performance for CHC promotions; and (c) the chaplain promotion and accession process has been manipulated to ensure liturgical domination of the CHC.

194. Senior CHC officials have falsely maintained that all chaplain records are highly competitive, inflated with high marks, even one or two low marks, *i.e.*, "B" or "C" (old system) or a "2" (new system), can make a chaplain uncompetitive, and only the most competitive are selected. However, the Stafford Report (Exhibit 18) shows that Catholic and Liturgical Protestant chaplains with many "Bs" and "Cs" were selected while testimony from plaintiffs has shown many chaplains with far better records, with no "Bs" or "Cs", including some plaintiffs, were not

selected.

195. Some senior CHC officials have conspired among themselves and others, knowingly or unknowingly, to deny or suppress the rights of plaintiffs and other Non-liturgical chaplains by depriving them information which confirm religious preferences, denominational prejudice and promotion board misconduct.

a. To accomplish this, these senior chaplains and other Navy officials have concealed and denied evidence of prejudice and bias in the selection process against plaintiffs, including the Navy's faith group quotas.

b. The Navy and CHC actions in concealing and denying the existence of its denominational preferences and prejudice against plaintiffs and other Non-liturgicals illegally concealed the basis for plaintiffs' constitutional and statutory claims and tolled all applicable statutes of limitation until plaintiffs discovered the basis for their claims.

196. Senior CHC officials have a duty to: (a) report misconduct and denominational favoritism, and (b) reveal the true nature of and prejudice in the Navy's promotion and other career related systems to plaintiffs and all other class members who have raised questions about the fairness and equity of the promotion process. CHC and Navy officials have breached that duty.

a. Senior CHC and DON leadership have known of the abuses and prejudice reported herein, but refused to address or take corrective measures and are defending the illegal policies.

b. The NIG, Judge Advocate General (JAG), Navy senior chaplains and leadership have covered up, excused or ignored the abuses described herein despite ample indications of denominational considerations affecting chaplain promotions and other personnel actions.

c. The Navy has developed a culture where coverup is more important than its duty to see the law and regulations are followed and misconduct is addressed.

d. The BCNR process to which some of these plaintiffs appealed is another vestige of the Navy's deceptive system which suppresses the truth.

197. The above actions by the Navy constitute fraudulent concealment which has prevented plaintiffs and the class from discovering the Navy's illegal prejudice and actions which form the basis for these plaintiffs' causes of action.²⁰ The self concealing nature of the promotion system and/or the Navy's fraudulent concealment has precluded Plaintiffs and their class from seeking timely redress and tolled any statute of limitations.

198. The following plaintiffs especially challenged their FOS or SER, sought clarification or information as to their reasons for FOS and/or SER and/or challenged the fairness and integrity of the promotion process. In every case they were provided false, misleading or no information and assured the Navy was a keeper of the law and continually practiced the virtues of honor and integrity: Blair, Bradley, Byrum, Demy, Hatch, Lancaster, Marsh, Rush, Weibling.

199. CH Weibling's testimony concerning his attempt to obtain information about the fairness and integrity of the promotion is typical of such inquiries. After his FOS he called the Detailer, CH (CAPT) Bourke to ask for career advise. CH Bourke provided four reasons that later proved to be false, including "all 'A' grades and recommendations for early promotion was typical for nearly all chaplains." He assured CH Weibling the system operated in a fair manner for all and many stellar performing officers with circumstances similar to his were being released from active duty. CH Weibling could not find any chaplains who would verify that the CHC allowed board manipulation. CH Weibling questioned RADM Muchow about the ability of the Chief to

²⁰ See note 3 *supra*.

influence board decisions at a Reserve Chaplain's conference in 1998. The Chief assured CH Weibling that he knew of no such practice and affirmed the fairness of the boards. Only after CH Weibling saw the Stafford Report did he realize RADM Muchow and the CHC had lied and deceived all. CH Weibling has testified that the Navy frustrated his efforts to obtain further information about board misconduct through FOIA.

200. Plaintiffs have exercised due diligence in attempting to protect their legal rights. The Navy's deception and actions in concealing its prejudice and other illegalities, the presumption of regularity and the self-concealing nature of the Navy's board processes have prevented plaintiffs from gaining the necessary information and evidence to bring their claims until the *CFGC* and *Adair* law suits breached the CHC promotion system's walls of secrecy and deceit.

201. Since discovery of the CHC and Navy misconduct and illegal actions, plaintiffs have acted in a timely manner.

- a. Twenty-three of these Plaintiffs sought to join the *Adair* class action.
- b. When the *Adair* plaintiffs could no longer represent active duty personnel, the *Gibson* plaintiffs filed to become a class, overlapping the *Adair* class action, providing all plaintiffs continuity of class judicial coverage.
- c. Many plaintiffs did not become aware of the basis of the suit and evidence of misconduct until the *Adair* class action was approved in 2003, which also discussed the evidence of CHC deceit and misconduct reported in the Stafford Report.

202. The *Adair* Court's delay in certifying a class, the inherent secret nature of the promotion, CADRAG and SER processes, and the Navy's deception and concealment of its violation of regulatory, statutory and constitutional violations equitably tolls any statute of limitations for claims covered by said concealment until plaintiffs' discovery of the Navy's wrong and/or acts as

an equitable estoppel against the Navy from arguing that a statute of limitation applies. Likewise, the *Adair* Court's failure to add plaintiffs and define the class also equitably tolls the statute.

203. This claim is common to all plaintiffs and the class.

COUNT 14

VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION ACT

204. The allegations in paragraphs 1 through 203 above are incorporated herein by reference as though pleaded in full.

205. The Navy's above challenged actions illegally burden the religious rights of Non-liturgical chaplains and Navy personnel without a substantial government purpose or narrow tailoring, in violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000-bb, *et seq.*

206. This claim is common to all plaintiffs and the class.

COUNT 15

A FORMER CHAPLAIN CORPS RECRUITING POLICY REQUIRING ALL CHAPLAINS TO ASSIST IN RECRUITING CHAPLAINS VIOLATED THE FIRST AMENDMENT

207. The allegations in paragraphs 1 through 206 above are incorporated herein by reference as though pleaded in full.

208. Beginning in the late 1990's, the Navy developed a problem recruiting chaplains. In March 2001, the Navy was about 60 chaplains below its authorized number and was still short when these suits were filed.

209. Plaintiffs assert the CHC's recruiting shortfall is a direct result of the prejudicial practices they are challenging. Some endorsing agencies no longer recommend that clergy consider the Navy as a viable career opportunity.

210. When clergy interested in the CHC ask active duty plaintiffs about their perspectives on

the Navy as a career, plaintiffs have truthfully described the general perception by Non-liturgical chaplains that they are often treated as second-class citizens.²¹ Plaintiffs' own experiences²² support the perception that Non-liturgical chaplains are not welcome in the CHC.

211. The March 2001 Navy Chaplain Leadership Conference in Dallas, Texas, discussed the Navy's chaplain recruiting shortfall. Echoing plaintiffs' claims, senior Catholic CH (CAPT) Gomulka addressed²³ why the CHC had that problem, pointing out that:

The Chaplain Corps has lied to clergy about opportunities for ministry in the sea services. When new chaplains discover how they are restricted in their ministry by senior chaplains who are jealous of their talents, they become angry and return to civilian life informing their clergy friends about the "truth" of what they can expect if they become Navy chaplains. The recent chaplain recruiting video is a perfect example of this problem. While the video portrayed chaplains happily engaged in ministry at a particular duty station, the truth of the matter was that a number of chaplains had left the Navy after having served at that particular duty station, frustrated at the way they were limited by command chaplains to exercise a fulfilling and life-transforming ministry. CNRC [Chief of Navy Recruiting Command] brought in chaplains from other commands to depict them happily engaged in ministry while the "real chaplains" at the duty station whose morale was quite low were nowhere to be seen.

Gomulka email, Exhibit 22 (Extract), ¶ 2.i.

212. In March 2001, then Chief RADM Black, and his Deputy RADM Iasiello, in separate but similar messages (the "Directives") directed all chaplains to personally and actively support chaplain recruiting efforts.

- a. The Directives established a new and mandatory Navy "chaplain to clergy" recruiting policy and program (hereafter the "Recruiting Policy").

21 See ¶ 7 of Ellis Report ("Non-liturgicals are often reminded ... that they are not as highly valued as others."), Ex. 8.

22 See, e.g., ¶ 3.

23 Chaplain Gomulka emailed his trip report and memorandum to other chaplains, one of whom provided the attached copy.

b. The Recruiting Policy required chaplains to furnish names of prospective seminary graduates and other clergy to the CHC for recruiting purposes, *id.*, and speaking positively of the Corps.

c. A chaplain's support/non-support for the Recruiting Policy was to be noted in fitness reports and chaplain support for recruiting was to be a criteria for promotion board consideration.

213. The Directives were designed to punish plaintiffs for warning civilian clergy of the CHC's systematic hostility and culture of prejudice plaintiffs challenge in this case, reducing some plaintiffs' promotion opportunities while increasing the promotion opportunity of those complying with the Directives.

a. Because failure to support the new Recruiting Policy promised the severe sanction of reduced opportunity for promotion, the Directives compelled or attempted to compel plaintiffs to "speak" what they would not otherwise say.

b. The Directives sought to maintain the current irrational and disproportionate chaplain imbalance which plaintiffs allege constitutes an endorsement of religion forbidden by the Establishment Clause.

214. The Directives and Recruiting Policy had two objectives that implicate First Amendment values. The first objective was to obtain from active duty chaplains the names of likely candidates for the CHC's recruiters. The second objective was to stifle criticism of the CHC, an issue of public concern, by compelling comments favorable to the CHC when potential candidates asked plaintiffs about the CHC.

215. The Directives could only be supported by compelled speech plaintiffs would otherwise not make.

216. Compliance with the Directives' second objective, making only positive comments, in effect, censored plaintiffs' speech.

217. The Directives violated the First Amendment, irreparably injuring active duty plaintiffs following the publication of the policy by:

- a. either censoring or compelling active duty or Reserve plaintiffs' and other chaplains' speech on issues of public concern, including alerting potential chaplains to the issues raised in this case;
- b. retaliating or allowing retaliation against plaintiffs for not complying with the Navy's illegal directives.

COUNT 16

10 U.S.C. § 613(a) IS UNCONSTITUTIONAL AS APPLIED TO PLAINTIFFS' CONSTITUTIONAL AND RFRA CLAIMS

218. The allegations of paragraphs 1 through 217 above her incorporated herein as though pleaded in full.

219. Plaintiffs have evidence from the defendants and DOD's investigations into promotion boards that denomination and/or religious ideology has become a criteria for selection.

220. Plaintiffs have testimony and information indicating denominational from board members a Protestant was removed from a CAPT Chaplain promotion list to make room for a Catholic after the Catholic board member complained no Catholic had been selected. If selection board members are released from their vows of secrecy, plaintiffs will be able to establish (a) denominational considerations have been the determining factor in chaplain promotion decisions, contrary to the Establishment and Due Process Clauses and RFRA, and (b) other board misconduct by board presidents and members.

221. This Court previously held that the restriction in former 10 U.S.C. 618(f), which *In re England* found barred discovery, was not unconstitutional or contrary to RFRA.

222. In October 2006, Congress amended Title 10, replacing § 618(f) with a new § 613(a) which forbids disclosure of selection board proceedings in litigation.

223. Because a statutory change has eliminated § 618(f), in order to preserve their rights of appeal on the ability to conduct discovery and seek judicial review of statutory selection board proceedings and actions therein, plaintiffs challenge the constitutionality of § 613(a)'s restrictions on discovery as applied to plaintiffs' constitutional and RFRA claims.

a. Nothing in the legislation indicates Congress intended to bar constitutional claims.

b. Barring plaintiffs' claims allows the defendants to violate the Constitution at will during the board process with no accountability and effectively denies plaintiffs their First Amendment right to petition for redress for violations of their constitutional rights, other First Amendment rights, and their ability to bring RFRA claims.

c. Denying plaintiffs' the ability to challenge the legality of actions within the board proceedings violates the separation of powers by prohibiting the judiciary from fulfilling its constitutional mandate to declare the law and the constitutionality of defendants' and Congress's actions.

224. This claim is common to all plaintiffs and the class.

COUNT 17 [DISMISSED]

FUNDING OF THE CHC'S ILLEGAL POLICIES, PRACTICES AND ACTIONS EXCEEDS CONGRESS' AUTHORITY UNDER ARTICLE I, SECTION 8 OF THE CONSTITUTION'S TAXING AND SPENDING CLAUSE

225. The allegations in paragraphs 1 through 224 are incorporated herein by reference as though pleaded in full.

226. Funding the Navy CHC and its associated programs and activities involves a substantial expenditure of federal tax funds.

227. The Establishment Clause of the Constitution's First Amendment specifically limits the taxing and spending power conferred by Article 1 Section 8.

228. 10 U.S.C. §§ 5142 and 5150 establish the Navy Chaplain Corps.

229. 10 U.S.C. §115(a)(1) requires Congress establish annually the Navy's officer active duty strength, including chaplains. Congress funds specific numbers and ranks of chaplains.

230. 10 U.S.C. § 115((b)(1)(A) requires Congress approve annually the Navy's number of illegally Retired Reservists recalled to active duty (the 4109s) "under section 12301(d) ... for the purpose of providing operational support", and fund specific numbers of officers by grade.

231. The Navy's denominational preference for Catholics communicates twin forbidden messages, favoritism to Liturgicals and inferiority and second class citizenship to plaintiffs and the class, some of whom have worked side by side with the 4109s and other illegally accessed and illegally recalled chaplains.

232. The Navy's twin unconstitutional messages are specifically directed to chaplains and communicated within the CHC through and by messages, meetings and publications bringing plaintiffs and the class into unavoidable contact with not only the message(s) but the personification of the Navy's forbidden message in the form of illegally hired and retained or illegally recalled Liturgical chaplains as well as the results of the Navy's illegal selection board procedures and biased personnel policies and practices.

233. Plaintiffs' "challenge here is to that portion of the overall congressional appropriation for the [Navy] that is used for the operation and maintenance of the Chaplaincy Program." *See Katcoff v. Marsh*, 582 F.Supp. 463, 470 (S.D.N.Y. 1983), *aff'd*, 755 F.2d 223 (2d Cir. 1985).

234. Plaintiffs specifically challenge on an as applied basis the expenditure of funds in authorizations Congress specifically knows will fund the actions of chaplains and chaplain related actions and policies, including those challenged here. This is not an incidental expenditure of tax funds in the administration of an essentially regulatory statute.

235. Congress recently changed the statutory provisions addressing chaplains showing, despite the wide latitude the Navy is given in the expenditure of tax dollars, it is Congress that consistently decides whether the Chaplaincy Program merits funding.

236. Congress' use of tax funds, including those collected from the Non-liturgical chaplains, Navy personnel and their faith groups, to fund the Navy's unconstitutional and prejudicial policies and actions, and its establishment or endorsement of preferred religious traditions in the CHC violates the Establishment Clause's specific prohibition on such funding or support. Neither the taxes paid nor the funds expended are insubstantial.

COUNT 18

ENDORISING AGENCY SEPARATE CLAIMS

237. The allegations in paragraphs 1 through 236 are incorporated herein by reference as though pleaded herein.

238. CFGC and the AGC bring their separate claims against the Navy because the policies, practices and procedures challenged in this Consolidate Complaint have discriminated against (a) CFGC and AGC chaplain applicants in accessions and (b) against their chaplains in promotion and career opportunities because of CFGC's and AGC's faith group beliefs, traditions and worship practices.

239. This discrimination has frustrated, impaired and harmed CFGC's and AGC's organizational objectives, and caused them unnecessary expenses to pursue and/or defend both

their organizational objectives and defend their chaplains from the Navy's prejudice and prejudicial actions.

240. The Navy failed to apply its equal opportunity guidelines to CFGC minority and female chaplains. [Dismissed].

232. The Navy, for no reason except denominational prejudice, vetoed a proposed DOD faith group identification system in the early 1990s that would have allowed charismatic and Pentecostal sailors and marines to identify themselves as associated with non-denominational churches and thereby allow their numbers to be counted in determining the faith group composition of the Navy.

241. The low accession and promotion rates for CFGC and AGC and the other evidence showing the CHC's open hostility to their faith groups established the CHC has unconstitutionally discriminated against them.

X. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for a declaration, an injunction, judgment and other relief against the defendants as described below.

A. Declaratory Relief. The allegations in ¶¶ 1 through 222 above show there is a bona fide dispute between the Plaintiffs and the Navy concerning whether the above challenged Navy policies violate the Establishment, Free Exercise, Free Speech and the Fifth Amendment's Due Process (equal protection) Clauses, the Civil Rights Act, RFRA, and the DOD and Navy's regulations. Pursuant to 28 U.S.C. §§ 2201 and 2202, plaintiffs request this Court render a Declaratory Judgment as well as injunctive relief.

B. Injunctive Relief. The allegations in paragraphs 1 through 222 above, incorporated herein by reference as though pleaded in full, show the plaintiffs have suffered, are

suffering and will continue to suffer immediate, severe, and irreparable injury by virtue of the Navy's acts, policies and practices set forth herein unless restrained by this Court.

Plaintiffs have no adequate remedy at law, and seek injunctive relief on behalf of themselves and the class against the Navy, enjoining the defendants, their agents and employees from using the policies, procedures and actions challenged herein and found to violate the law.

C. Specific Declaratory and Injunctive Relief. To facilitate understanding of the relief plaintiffs seek, the declaratory and injunctive relief sought for each count is listed below.

Plaintiffs seek:

1. Count 1. A declaration the Navy's Faith Group Category System violates the First and Fifth Amendments because it is arbitrary, discriminatory, and conceals and facilitates Navy denominational prejudices and practices.

An injunction against the Navy's grouping together for CHC personnel management and/or assignment purposes Non-liturgical faith groups with dissimilar or contrary theologies or worship practices.

2. Count 2. A declaration the Navy has established and maintained an unconstitutional religious hierarchy and preference system through its unconstitutional denominational and/or faith group cluster goals and/or quotas goals.

Note: It is inevitable that goals successfully focused at making the CHC reflect American society, from which the Navy draws its personnel, will ultimately result in more personnel of some faith groups than others, merely as a result of the nation's religious and clergy demographics and the personal free choice of religion by military personnel. Plaintiffs' challenge here is to hierarchies that do not reflect those demographics and rely on arbitrary decision making concerning chaplain faith group goals and allocations that produce religious bias. Plaintiffs desire

a constitutionally based level playing field with the CHC structured to reflect its purpose, meeting DON's free exercise needs in the context of its operational realities. Consequently, plaintiffs seek an injunction requiring the Navy to establish effective guarantees that its CHC personnel and personnel management decisions are based on and reflect identified needs and that access to the highest levels of the CHC are not limited by arbitrary limits and established hierarchies.

3. Count 3. A declaration the Navy has established and maintained an unconstitutional chaplain accession system unrelated to meeting DON's Free Exercise needs.

An injunction enjoining the Navy to develop and maintain (a) systematic programs and procedures using objective criteria to evaluate DON's free exercise needs in the context of its operational requirements; (b) objective standards to determine DON's denominational accession requirements and mix that best meets the CHC's mission to provide for the DON's free exercise needs; this could be the national religious demographics, DON's actual religious demographics or a combination of both; (c) realistic denominational accession goals based on established and objective criteria that also reflect the appropriate pool of available clergy applicants, *see, e.g., Hazelwood School Dist. v. U.S.*, 433 U.S. 299, 303 (1977) ("qualified public school teacher population in the relevant labor market") while providing flexibility to adjust to market realities;²⁴ and (c) ensure that established faith communities in overseas locations, *e.g.* Naples, Italy and Rota, Spain, are provided chaplains that meet the needs of those faith communities.

4. Count 4. A declaration that:

(a) the Navy's past and present chaplain promotion, CADRAG, and SER selection board systems violate the First and Fifth Amendments and RFRA and were illegally composed. This includes

²⁴ Under the old demographic based system, if there were foreseeable vacancies or unmet goals in some denominations but available applicants in others, the available clergy were accessed, conserving resources and billet spaces, and adjustments made in the following years if practical.

the procedures allowing one board member to “zero out” a chaplain candidate’s promotion and/or career, small boards, secret votes, briefing of records rather than requiring each member’s review of each candidate’s record, failure to provide accountability for board member votes, and discussions about candidates that are unrecorded and allow non-record information or evaluation to enter into consideration;

(b) the Navy’s practice of using the Chief of Chaplains as the board president violates the First and Fifth Amendments;

(c) all boards using those procedures, including chaplain promotion, CADRAG and SER boards, since FY 77 to the present, the time period claimed by the class, are unconstitutional and void *ab initio*;

(d) the practice of using chaplains as board members violates the Establishment and Due Process Clauses since the Navy has no effective guarantees the power that adheres with board membership can be used only for secular, neutral and non-ideological purposes;

(e) those plaintiffs and members of the class separated by the challenged boards are entitled to be reinstated to active duty until such time as they have been reviewed by legally constituted boards; and

(f) the Navy’s CARE board system and its procedures are unconstitutional because it has no objective criteria and no effective means to preclude improper denominational considerations from influencing or entering into the accession evaluation and decision process.

NOTE: Reform of Navy selection boards’ processes and procedures is easily achieved if the Navy adopts Army and Air Force selection board procedures.

An injunction requiring the Navy to:

- (a) cease placing chaplain(s) on selection boards unless there are effective guarantees the delegated power will be used for secular, neutral and non-ideological purposes which prevent the opportunity to advance denomination or exercise personal bias;
- (b) cease allowing the Chief or Deputy Chief of Chaplains to serve as president of CHC selection boards, participating in the selection or approval of any chaplain selection board member(s), or serving on a chaplain selection board;
- (c) establish procedures (as the Army and Air Force require) that
 - (i) require each board member to review and score each chaplain candidate's record,
 - (ii) establish accountability for each board member's vote, and
 - (iii) prohibit board members briefing chaplain candidates records;
- (d) provide a sufficient number of board members similar to Army and Air Force boards to prevent manipulation of board results;
- (e) cease discussing candidates' records except in unusual situations defined by regulations, *e.g.*, two equally qualified candidate records vying for one remaining promotion and President believes members' views would help reach consensus, and in such cases, to make a summary record of the discussion;
- (f) require the removal of all chaplain denominational or faith group identifiers from candidates' records being reviewed by boards, *e.g.* reference to "rabbi, priest, imam, from the records under review and removal of all seminary records (which can often identify a chaplain's denomination);
and
- (g) develop objective criteria and procedures for CARE boards to evaluate clergy or religious leader applicants for chaplain appointments with effective means to preclude improper

denominational considerations from influencing or entering into the accession evaluation process.

5. Count 5. A declaration

(a) the Navy's Reserve Chaplain recall system as applied has violated its own regulations, is discriminatory and unconstitutional;

(b) those chaplains illegally recalled must be returned to Reserve duty;

(c) their illegal recall has improperly restricted or denied promotions of eligible Navy Regular chaplains or properly recalled Reservists; and

(d) the illegal recall system has improperly and prejudicially influenced the SER process and resulted in chaplains being improperly, involuntarily retired.

An injunction enjoining the Navy from violating its own regulations and establishing a monitoring program to ensure chaplain recalls, if any, are denominationally neutral and/or based on an objective need and comply with the CHC's regulations.²⁵

6. Count 6 [Dismissed]. A declaration the Navy's practice and/or policy allowing chaplains to rate other chaplains, except in exceptional circumstances, violates the First and Fifth Amendments.

An injunction requiring the Navy to establish effective policies that provide objective criteria for chaplain evaluations, and ensure Commanders rate chaplains based on objective criteria and measurable results related to effective ministry with safeguards against denominational bias.

7. Count 7. A declaration the CHC has created an unconstitutional culture of religious prejudice or bias characterized by:

²⁵ Plaintiffs recognize there may be a need to recall specific denominational reservists, *e.g.*, Rabbi, to meet free exercise needs in an operational context.

- (a) persistent and overt hostility to non-liturgical chaplains and Navy members and favoritism for Liturgical denominations;
- (b) subjective evaluation systems not descriptive of chaplain duties and ministry;
- (c) two systems for discipline and management, one for favored denominations and another for non-favored denominations; and
- (d) the encouragement, maintenance and advancement of chaplains who have made a career of killing Non-liturgical chaplains' careers.

An injunction requiring the Navy to establish

- (a) a monitor, reporting and investigation system to
 - (i) review career assignment and
 - (ii) receive and address claims of denominational prejudice in career alignments, administrative actions and discipline;
- (b) develop a fitness report for chaplains that provides objective performance criteria, identifies appropriate competencies related to ministry, provides commanders appropriate information on evaluating other chaplain specific duties, and rewards effective ministry, *e.g.*, growing base chapel communities.; and
- (c) address and remove the penalties to specific plaintiffs' careers caused by command chaplains' or commanders' hostility because plaintiffs' preached and prayed according to their faith tradition, grew chapels and nurtured their congregations.

8. Count 8. A declaration the Navy's hostility to non-liturgical denominations and their traditions as reflected in all of the above has burdened plaintiffs in violation of the First and Fifth Amendments and RFRA.

See Count 7 for the appropriate injunctive relief.

9. Count 9. A declaration the Navy discriminates against non-liturgical chaplains' religious free speech.

An injunction requiring the Navy to establish polices and procedures to protect chaplains' religions speech, and address and remedy the damage to specific plaintiffs' careers because of senior chaplains' or commanders' hostility to Non-liturgical religious speech.

10. Count 10. A declaration (a) the Navy's policy of promoting only a "General Protestant" type of service and restricting other forms of Non-liturgical religious services has violated the First and Fifth Amendments and RFRA; and (b) the Navy has retaliated against and penalized plaintiffs and other Non-liturgical chaplains for growing chapel congregations and communities.

An injunction enjoining the Navy to:

- (a) cease emphasis on a "one size fits all" approach to religious worship;
- (b) establish polices and procedures to ensure established faith communities are supported with chaplains and resources, and the members of those congregations are encouraged to participate and have input into decisions affecting the congregation or community;
- (c) establish objective criteria to measure the health of such communities and ensure they receive appropriate command and logistical support; and
- (d) address and remove the penalties to specific plaintiffs' careers caused by command chaplains' hostility or commanders' hostility because plaintiffs' preached and prayed according to their faith tradition, grew chapels and nurtured their congregations.

11. Count 11. A declaration the Navy constructively discharged certain plaintiffs.

An injunction requiring the Navy to remedy the harm to plaintiffs' careers caused by their illegal discharges.

12. Count 12. A declaration the Navy's actions against certain plaintiffs was illegal retaliation.

An injunction requiring the Navy to address and remove the penalties to specific plaintiffs' careers caused by retaliation.

13. Count 13. A declaration the Navy fraudulently concealed and/or illegally covered up the evidence of plaintiffs' cause of action.

14. Count 14. A declaration the Navy's actions challenged in this Combined Complaint have violated RFRA.

Injunctions in the other Counts should address the burden resulting from the Navy's challenged policies. *E.g.*, Counts 4, 5, 7.

15. Count 15. A declaration the former CHC recruiting policy requiring all chaplains to assist in recruiting chaplains violated the First and Fifth Amendments and RFRA.

An injunction

(a) prohibiting the Navy from requiring all chaplains to recruit chaplains, rewarding those who comply with the policy and punishing those who do not;

(b) ordering the Navy to remove all references to support/non-support of the recruiting policy from all chaplains' records except those chaplains assigned to recruiting; and

(c) requiring the Navy to address and remove the penalties to specific plaintiffs' careers caused by failure to support the challenged recruiting policy.

16. Count 16. A declaration 10 U.S.C. § 613(a) is unconstitutional as applied to plaintiffs' constitutional and RFRA claims.

An injunction enjoining the Secretary of Navy from refusing to release board members from their oath of secrecy when allegations of board misconduct arise.

17. Count 17 [Dismissed]. A declaration the funding of the current organization of the Navy CHC exceeds congress's authority under Article 1, Section 8 of the Constitution's Taxing and

Spending Clause.

18. Count 18. A declaration the Navy has:

(a) discriminated against CFGC and AGC chaplain applicants and their chaplains in promotion and career opportunities, frustrating CFGC's and AGC's organizational objectives, causing them unnecessary expenses to defend their missions and chaplains;

(b) failed to apply its equal opportunity guidelines to CFGC Minority and female chaplains [this claim was dismissed];

(c.) The Navy vetoed a proposed DOD faith group identification system in the early 1990s that would have allowed charismatic and Pentecostal sailors and marines to identify them selves as associated with non-denominational churches, many of which are represented by CFGC chaplains, and thereby allow their numbers to be counted in determining the faith group composition of the Navy.

An injunction requiring the Navy to develop a system that will allow DON personnel from charismatic and like faith Non-denominational groups to identify themselves as such at enlistment or inprocessing.

Addressing the issues in the other Counts will address these organizations' injunctive requirements.

C. An Order

Plaintiffs request that the Court issue an Order requiring the Navy to:

1. Implement all of the injunctive relief plaintiffs request in their Counts 1-19 above.
2. Develop, in coordination with plaintiffs, and maintain a system of checks and balances to insure that the actions implementing the injunctive relief above and additional relief here have (a) effectively eliminated religion, faith group or denomination from

effecting promotions or career processes unless linked to remedying past discrimination; (2) eliminated all vestiges of the CHC's past religious bias and discrimination in selecting chaplains for promotion and career assignments; and (3) complaints of religious discrimination are promptly investigated and addressed. . For chaplain promotion and SER boards, this includes:

3. Take all necessary and affirmative actions to immediately:
 - a. Identify or project DON's operational religious free exercise needs through actual measurement or estimates based on national religious demographics, including (i) considering DON operational requirements, (ii) the resources required to meet those needs, (iii) the resources available through DON, (iv) the resources available in operational/deployment areas and other resources such as English speaking religious leaders/clergy in ports of call, and (v) other factors such as appropriate retention and personnel considerations;
 - b. Develop a plan to adjust the CHC, including its current rank structure on a one time basis after the new boards are conducted, so it reasonably reflects the Navy's identified religious needs;
4. Energetically and effectively investigate all allegations of religious prejudice by senior chaplains in rating or supervising Non-liturgical chaplains. Where actual prejudice is found or bias demonstrated, correct the records and remove the prejudice from the affected Non-liturgical chaplain's official career file, take other necessary actions to make plaintiffs whole, and take corrective action to preclude further incidents of prejudice.
5. Develop new policies, guidelines and regulations that:
 - a. Reflect and address the wide differences in theological perspectives and

worship practices among faith groups characterized as Non-liturgical, *e.g.*, pentecostal/charismatic faith groups versus those which reject pentecostal beliefs and practices;

b. Encourage denominational specific services, and provide approval and support mechanisms for alternative Non-liturgical services that meet the varying needs of the Navy's Non-liturgical religious community at Navy installations, bases, ships and facilities, especially at overseas locations;

c. Ensure that such services receive priority or become the main Christian service when Non-liturgicals constitute a majority at the installation, base or facility;

d. Take affirmative steps to eliminate CHC bias against Non-liturgical worship, beliefs and chaplains;

e. Where a recognized faith community has developed, *e.g.*, charismatic and evangelical (Naples and Rota), ensure chaplains of that faith perspective are assigned in a manner providing continuity and effective support;

f. Develop secular, neutral criteria that identifies, describes and measures the performance standards and factors for chaplain evaluations,, including specific guidance on measuring supervisory chaplains' skills and effectiveness.

6. To continue to officially record the religious preference of *all* Navy personnel.

7. Issue the necessary orders voiding all adverse personnel actions, including but not limited to separations and early retirements, flowing from the 1977-1986 2RC Policy, the follow on 1RC Policy (1986-2002), the Thirds Policy and its progeny and the unconstitutional promotion and SER boards described herein, and take other action to

remedy the results of the Navy's illegal activities described herein and make plaintiffs and the class whole, *i.e.*, as if there had been no prejudice.

8. Instruct promotion boards that in considering chaplains with prior service as Navy, Marine or other Armed Service officers, the candidate's prior-service fitness reports will be considered positively in the promotion process absent compelling contrary reasons.

9. Rescind all letter, directives and/or training lessons suggesting or implying how chaplains are to pray in public and publish regulations and provide training, especially for commanders and senior staff officers, affirming a chaplain's right as a denominational representative to freely speak and pray from his or her faith perspective.

10. Develop a screening, evaluation and treatment program for Post Traumatic Stress Disorder (PTSD) for plaintiffs, the class, and where appropriate, their dependents. This is necessary due to a large number of Plaintiffs who have PTSD as a result of working under command chaplains who have destroyed chaplains' careers, or other causes of PTSD or similar injury, such as betrayal by the CHC and the Navy.

11. Provide special compensation for these plaintiffs for the expense, stress and hostility they have endured to bring this action and vindicate their rights and correct serious misconduct, breaches of the public trust, misuse of taxpayers funds, abuse of power and violation of duty to uphold the Constitution.

D. Attorneys' Fees and Other Relief

1. Plaintiffs request this Court award plaintiffs the reasonable costs and expenses of this action, including expert and attorneys' fees in accordance with the Equal Access to Justice Act, 28 U.S.C. § 2412; the Civil Rights Act, 42 U.S.C. § 1988; the Religious Freedom Restoration Act, 42 U.S.C. § 2000-bb; class action case law and/or any other

applicable statute or rule of law or equity.

2. That this Court:

- a. Retain jurisdiction of this matter for the purposes of enforcing the Court's orders;
- b. Require the Navy to provide periodic reports to the Court and plaintiffs as to its progress in complying with B and C above;
- c. The Court provide other such relief as may become apparent in the course of litigation.

Respectfully submitted,

Dated: October 1, 2012

/s/ Arthur A. Schulcz, Sr.
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EXHIBIT LIST

<u>Exhibit</u>	<u>Identification or Subject</u>
1	Affidavit of Rev. Dr. Jim Ammerman, CFGC Director
2	Chief of Chaplains List
3	<i>Wilkins v. Lehman</i> , 85-cv3031 slip op. (S.D.Cal. 1986)
4	7/8/98 Report by the Defense Manpower Data Center (hereafter "DMDC")
5	Department of Navy religious demographics based on the DMDC data for 1998-2001 and 2006 (when <i>Gibson</i> was filed -- includes DON officer preferences)
6	Navy Chaplain Corps' formula for computing pre-July 1986 accession goals
7	Affidavit of CAPT Larry Ellis, CHC, USN
8	FY88-2001 Accession goals
9	October 1999 Chaplain Corps Briefing on Department of Navy Religious Preferences
10	Declaration of CAPT James Poe, CHC, USN (Ret.) ("Poe"), Regional Chaplain, Naval Region Europe ¶¶ 10-12
11	Dr. Harald R. Leuba, PhD, Expert report, <i>Allonge Declaration</i>
12	1988-2005 Non-liturgical Accessions, Table QE-6 from, <i>Withdrawal & Correction</i> , Dr. Harald R. Leuba, PhD (Expert Report, created in <i>Larson v. U.S. Navy</i>)
13	Orders recalling Chaplain (CDR) John Lyle as a flight surgeon
14	CAPT Larry Ellis's 1/25/95 Memorandum to Chief of Chaplains
15.	CHC FY77-02 chaplain board denominational members
16	Over- and Under-Representation of LCDR board members by FGC compared with the LT community under consideration for promotion to LCDR
17	Over- and Under-Representation of CDR board members by FGC compared with the LCDR community under consideration for promotion to CDR

- 18 CAPT J. N. Stafford, special assistant for Navy minority affairs, report to the Chief of Naval Personnel of investigation of FY 97-98 chaplain CDR promotion boards
- 19 Extracts (pp. 3 & 4) of March 1999 DOD IG investigation into FY97 and 98 CDR chaplain promotion boards in selecting
- 20 Chaplain/adherent ratios by FGC
- 21 Commander, Guantanamo Bay, Cuba, Memorandum Command Chaplain rejecting attempt to suppress the 0730 service, a Non-liturgical charismatic service
- 22 Email by CAPT Eugene Gomulka re: Recruiting Problems

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2012 true and correct copy of **the In re Navy Chaplaincy Plaintiffs' Consolidated Complaint** was filed with the Court's Electronic Case Management Filing System which serves a copy of said filing on the following;

Christopher Hall
Matthew Lawrence
Attorney, Civil Division
U.S. Department of Justice
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S/ Arthur A. Schulcz, Sr.
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ADDENDUM A
Individual Chaplains Individual Chaplains Plaintiff's Names Alphabetically, Addresses and Claims

Each of the 65 individual chaplain plaintiffs is identified below with a number for accountability and ease of reference; each plaintiff's original case is indicted by (). Each has suffered injury as a result of the Navy's policies challenged here which have deprived them of fair and equal opportunity for promotion and a career in the Navy, as well as the corollary injuries flowing from (a) the deprivation of their First and Fifth Amendment and statutory rights,(b) violations of statues and regulations; and (c) the identified harms identified herein:

Each plaintiff is listed alphabetically in Attachment B by specific case listing.

1. ROBERT H. ADAIR (*Adair*) resides at 304 Cowan Street, Columbia, TN 38401. He enlisted in the Navy in January, 1967. After completing his enlistment in 1970, he went to college and seminary, earning a Master of Divinity Degree in 1977. Endorsed by the Southern Baptist Convention, a Non-liturgical denomination, he entered active duty as a Navy chaplain in 1979. Despite his outstanding service, he was selected for early retirement in FY 95 by a Selective Early Retirement Board (SERB) that selected only Non-liturgical chaplains while allowing Liturgical chaplains with inferior records to continue on active duty. He was involuntarily retired in 1996. But for the SERB decision, believed to rest on illegal religious discrimination and animosity toward his faith group, Chaplain ("CH") Adair would have continued on active duty and retired at a higher pay rate.

2. RICHARD ARNOLD (*Gibson*) lives at 13055 Fringetree Drive, #E, Jacksonville, FL 32246. CH Arnold was commissioned in the Theological Student Program as an Ensign in 1982 and entered active duty as a Navy chaplain in August 1987. He was endorsed by the Southern Baptist Convention and entered the Navy with 3 years prior enlisted service in the Air Force where he

rose to the rank of Sargent. After various assignments, he was selected to go to postgraduate school in 1993 and completed his work in 1994. During this time he was promoted to LCDR.

He then reported to Mayport, FL where he worked under the supervision of command chaplain Charles Eis, a Roman Catholic. CH Eis' strange behavior and conduct led CH Arnold and another chaplain at Mayport, LCDR Aufderheide, to intercede with the commanding officer to have CH Eis psychologically evaluated for his fitness for service. As a result of his involvement in an attempt to help CH Eis and protect his command and the Navy, CH Arnold was banished from the chapel by CH Eis and was accused by Catholics as having "destroyed Charlie's career." CH Eis was later selected for Selective Early Retirement.

An acquaintance notified CH Arnold that CH (CAPT) Oddo, a Roman Catholic, made a comment at a Senior CHC leadership meeting that "There is no place in the navy for Rich Arnold." This statement is without foundation and was a message from the Catholic CH Oddo to others, particularly Catholics, who might serve on promotion boards that CH Arnold was "damaged goods." This statement had no other context except retaliation, given CH Arnold's outstanding record and service. However, in assignments following Mayport, the CHC detailed CH Arnold to LT (O-3) billets although he was a LCDR. Because the promotion system operates with secret votes and small numbers, CH Arnold believes he was blackballed either in retaliation for his role in having CH Eis evaluated, or as a result of the false information and character assassination related to his role in reporting a senior chaplain's misconduct and strange behavior. The BCNR denied his appeal of his non-selection to CDR. CH Arnold is now retired.

3. RAY A. BAILEY (*Gibson*) lives at 345 Wilson Dr., Havelock, North Carolina, 28532. He is endorsed by the Evangelical Free Church of America, a non-liturgical faith group. He entered active duty in January 1994. The Navy's illegal and egregious prejudice against Non-liturgical

faith groups and their chaplains has illegally prejudiced CH Bailey's career. While stationed at the Naval Support Activity, Naples, Italy, the liberal Episcopalian command chaplain, CDR Gary Parker, made the general comment to CH Bailey and the other Non-liturgical chaplains under his supervision, "You talk about Jesus too much in your sermons." This was a clear warning to CH Bailey and other Non-liturgical chaplains that CH Parker considered the provisions of 10 U.S. C. § 6031, which allows chaplains to conduct worship services according to the customs of their church, to be void.

On the USS EMORY S. LAND (May-October 1999), liturgical Command CH Lanz required CH Bailey to preach from the liturgical calendar and conduct liturgical services although CH Bailey is Non-liturgical. CH Lanz said on numerous occasions, "the Navy should go to one style of worship, mine," Presbyterian and liturgical.

Throughout his Navy career, CH Bailey has been hindered by Liturgical Protestant senior chaplains who have tried to force his and all other ministry into a narrow liturgical format or mode regardless of the religious needs or preferences of the population he served. This prejudice is further reflected in the Navy's failure to consider him fairly for promotion. The Navy has injected bias and prejudice against Non-liturgical chaplains such as CH Bailey in the CHC promotion and career process, as evidenced in the flawed board composition and procedures. After being FOS numerous times, CH Bailey was promoted to LCDR in 2003. Reportedly, he was selected after the Navy eliminated the division between "above-zone" (previously not selected) and "in-zone". If true, this supports CH Bailey's belief he should have been selected when first considered, but was prejudiced by the CHC's bias against Non-liturgicals.

4. MICHAEL BELT (*Adair*) was an active duty chaplain at the rank of Lieutenant when this suit was filed. He now resides at 2160 Casitas Del Rio Dr., Phoenix, AZ 05024. Enrolling in the

Navy Chaplain Candidate Program as a United Methodist, he changed his endorsement to the Non-liturgical Church of the Nazarene before entering active duty in September 1991. While stationed on Okinawa from 1991 to 1993, his Liturgical Protestant rating chaplain gave him a poor fitness report after CH Belt failed to support his rater's selling tickets to the rater's prayer breakfasts. This same Liturgical Protestant chaplain later berated CH Belt for preaching that men who call themselves Christians should live as Christians and gave CH Belt a low mark on his fitness report. After CH Belt and another Non-liturgical chaplain reformatted a Protestant service with low attendance, the congregation grew from 40 to approximately 130. In recognition for this, he was told by his rating Liturgical Protestant chaplain that his style of worship was "hogwash." The Liturgical Protestant then took over the service, changed it back to a Liturgical service, effectively killing the service and driving the congregation away.

At his duty station in San Diego, he witnessed and experienced Liturgical bias and prejudice against himself and other Non-liturgical chaplains, including being excluded from decisions and meetings that affected him and other chaplains until after decisions had been made at exclusively Liturgical chaplain meetings, and seeing Catholic and Liturgical Protestant chaplains whose work output was below their peers nonetheless being given higher fitness reports. As a result of the Navy's denominational prejudice, CH Belt was non-selected for promotion to the grade of Lieutenant Commander ("LCDR") by the fiscal year ("FY") 1999 and 2000 chaplain promotion boards. CH Belt became aware of the Navy's systematic bias in early 2000 after talking with another chaplain whose endorsing agency (the Chaplaincy of Full Gospel Churches) had filed suit against the Navy.

As a result of injuries received on active duty complicated by Navy medical malpractice, CH Belt became an invalid, walking only with great difficulty and pain. The Navy started the process

for a medical board to evaluate the CH Belt for medical retirement. However, due the Navy's delay and broken promises, CH Belt was separated for FOS in March 2006, despite the Navy's failure to complete the medical evaluation board causing CH Belt and his family great distress and hardship

5. WILLIAM C. BLAIR (*Adair*) resides at 1 Idlewood Drive (W.E.), Jamestown, NY 14701. He is endorsed by the Non-liturgical Assemblies of God faith group. Before attending seminary, he had prior enlisted service in the U.S. Marine Corps from September 1972 to August 1976. He became a Navy chaplain in July 1983 and was recalled to active duty in September 1983. He was promoted to Lieutenant Commander and selected for post graduate school. As a Non-liturgical chaplain, he was required to be able to officiate at Liturgical Protestant services, but Liturgical Protestant chaplains were not required to know how to or to officiate at Non-liturgical services. Yet, he was not selected for Commander by the FY 97 chaplain Commander selection board, despite an outstanding record superior to many of those selected for promotion.

When CH Blair attempted to learn the cause of his non-selection, he was told by a senior CHC official that his one rating (in 16 years of service) of 3 of 3 was the only indication in his record. He appealed that rating and his non-selection to the Board of Correction of Naval Records which in effect informed him that there was nothing wrong with the board and that he had no basis for a complaint. His subsequent requests for an explanation were met with a "we can't talk about the board - it's a secret."

Following his second non-selection, he was told by the Chaplain Corps to "either retire or be retired." In the face of the Navy's threat and prejudice, he retired on September 1, 1999. The result of the Navy's prejudice, actions, and threats constitutes a constructive discharge.

Subsequent investigations of the FY 97 and 98 Commander's boards found that a chaplain's

faith group became a consideration and criterium for promotion, *see, e.g.*, ¶ 52, *infra*. Being a Non-liturgical, CH Blair did not belong to a favored faith group. Upon examination of the information in the Stafford Report, *id.*, CH Blair could see that his record was superior to many who were promoted; some of those promoted had in their records the very things which CHC senior officials had consistently said would keep a chaplain from being promoted.

Other examples of the prejudice he received include the Navy's lack of support and hostility to a "full gospel" worship service he started around 1992 in Naples, Italy, that became the largest on-base non-Catholic service. While the poorly attended liturgical General Protestant service received full support and funding, his well attended service had to improvise just to survive, including using a borrowed personal stereo amplifier to run the service's sound system.

6. RICK P. BRADLEY (*Gibson*) currently resides at 2580 Grummer Lane, Conway, Arkansas. He was endorsed by the Southern Baptist Convention, commissioned and entered active duty as a chaplain in December 1997. Following Chaplain School and training at Camp Lejeune, he was sent to Guam for his first assignment to the sub tender USS FRANK CABLE, AS40. He left Guam in December 1999 and transferred to Paris Island for the period January 2000 to September 2003, when he was reassigned to Marine Air Group at Beaufort, SC. As a result of a physical in his pre-deployment procedures, he was discovered to have an unknown blood disease. This led to a two-year period of multiple visits to Walter Reed Army Medical Center, Bethesda Naval Medical Center, and Johns Hopkins University, which finally determined the cause of his medical manifestations was a reaction to anthrax. This made him ineligible for deployment and resulted in a medical board which subsequently discharged him. However, during the time when he was being evaluated, he went before a promotion board in March of 2002 for FY03, for which he FOS to LCDR despite outstanding fitness reports.

Prior to his revisiting Walter Reed, he worked with the Deputy Command Chaplain to ensure his file that appeared before the board was complete. However, when he reviewed his Officer Personal Data Sheet after the board, he found it had been substantially altered with blanks and other incorrect information, so much so that it did not accurately reflect in any meaningful way his history, education or other information relied upon by the board. There is no explanation as to how this information was corrupted. In attempting to resolve this, he was told by his command chaplain he needed to talk to the Chief of Chaplains office. That office told him he needed to work with his command chaplain. Before this could be resolved, CH Bradley was medically discharged. During his time on active duty, he was reprimanded by his senior chaplain for praying in Jesus' name at a graduation while assigned to Paris Island, although it is a practice consistent with his faith group's beliefs and practices.

CH Bradley's FOS to LCDR is believed to be the result of prejudice against him for his consistent, effective performance and insistence on following the dictates of his conscience, which included praying in the name of Jesus, as authorized by his faith group.

7. GEORGE PHILIP BYRUM (*Gibson*) lives at 3421 Anderson Dr., Winston-Salem, NC 27127. He began his military career on March 24, 1972. Completing Navy flight school, he served as a Naval aviator until he entered the Theological Student Program in 1979. Graduating from Southwestern Baptist Theological Seminary, he became a Navy chaplain in 1981, endorsed by the Plymouth Brethren, a Non-liturgical faith group. During his career as a chaplain, he was selected for post-graduate schooling and earned a Masters Degree in pastoral counseling. CH Byrum's outstanding performance is indicated by the fact that he never had less than an "A" on his 26 observed fitness reports, was rated in the top 1% and 25 times recommended for "early promotion." CH Byrum had two combat tours, serving on the USS KENNEDY during the Beirut

(Lebanon) conflict and in Desert Storm with the 4th Marine Expeditionary Brigade. He was selected for the Chaplain Advanced Course during which he completed a second Masters Degree. He was awarded the Humanitarian Service Medal for his work as the command chaplain of the Naval Air Station Guam for his leadership in relief work following Typhoon Omar in 1993. Despite his outstanding record, selection for postgraduate school and two additional graduate degrees, the Chaplain Corps FY96 SERB selected CH Byrum for involuntary retirement effective July 31, 1996, before he was considered for promotion to CAPT. CH Byrum challenged his selection for SER through the BCNR, using the same arguments presented here, that the reservation of a selection board seat for a Catholic, for both promotion and SER boards, was illegal. The BCNR rejected his petition.

Analysis of the FY96 SER candidate career histories shows while choosing CH Byrum with no FOS for SER, the board retained four of the six chaplains with numerous FOS to CAPT, including the chaplain with the most FOS (CH Palmer) who had about one year active service left. This is contrary to the Secretary's SER criteria for retention which emphasized future potential for service. CH Byrum believes the CHC selected him for involuntary retirement on the basis of his faith group and because his outstanding record as a Non-liturgical chaplain was a threat to the Liturgical domination of the CHC. No other explanation is apparent given the records of those the CHC retained compared with CH Bryrum's.

8. ANDREW CALHOUN (*Gibson*) currently resides at 3269 East Bonnie Drive, Oak Creek, Wisconsin. He began his career as a Navy chaplain commissioned as an Ensign in 1984 in the Theological Student Program and endorsed by the Church of God in Christ, a Non-liturgical denomination. He was subsequently given a superceding appointment to the CHC in 1988, came on active duty in 1990 and was assigned to the Naval Training Center, Great Lakes, Illinois. He

was then assigned to the USS BAINBRIDGE. Because of his involvement with a community service program, his ship was recognized as having the most outstanding community service programs. In fact, the name of the Navy award given to ships for community service is now known as the USS BAINBRIDGE Award, a recognition of the contribution CH Calhoun made to both the Navy and his ship. His subsequent assignments included a tour at the Milwaukee, Wisconsin Coast Guard Station followed by postgraduate school, where he obtained a MTh degree, a reassignment to Okinawa for a one year unaccompanied tour, and then to Little Creek, Virginia. He was promoted to LCDR in 1994.

Two weeks prior to the FY2001 CDR board, he received a revised fitness report delivered to him by FedEx which substantially reduced his final fitness report for the period he was at the Milwaukee Coast Guard Station. This report was written outside the window in which corrections were authorized to be made and he received no warning or opportunity to rebut it, nor an explanation of the basis for the change. He came to believe this report was instigated by RADM Iasiello since a letter accompanying the report indicated it had the approval of RADM Iasiello, who also served as the president of the promotion board before which the report was submitted. The apparent unfairness of the later report which undermined his chances for promotion, the complicity of RADM Iasiello, who should have recused himself from consideration as president given his involvement in the approval of the revised report, and subsequent difficulty in attempting to resolve the question, convinced CH Calhoun the Navy had become hostile to him, there was no place for him in the Navy CHC and he submitted his resignation. The CHC's animosity against him is further exemplified in its rejection of CH Calhoun's request for release from the Navy in the early summer of 2001 to pursue civilian employment opportunities and minimize the impact of transition on his family. The Navy would not release him until February

of 2002. The Navy's treatment of CH Calhoun is typical of the second class treatment afforded many Non-liturgicals and reflects a determined effort to insure that gifted and qualified Non-liturgicals are removed from the service.

9. MARTHA CARSON (*CFGC*) was commissioned in the United States Marine Corps in 1980 and served as a Marine until 1987 when she left active duty to obtain a Masters of Divinity Degree at Duke University, Durham N.C. Beginning the process to become a Navy Chaplain under the endorsement of the United Methodist Church, she switched to *CFGC*'s endorsement before reporting for active duty. The Navy's and *CHC*'s actions suggest Navy discrimination against her based on her identification as a *CFGC* endorsed chaplain. This discrimination took various forms, including: (a) unreasonable delay and changes in bringing her to active duty after she had changed her endorsement to *CFGC* and had quit her job based on a specific reporting date and ship assignment (*USS Simon Lake*) that the *CHC* had previously given her; (b) denying her a fair opportunity for promotion by turning her prior outstanding military service into a detriment and liability and giving her assignments that made her non-competitive for promotion; (c) causing economic and other injury by unreasonably delaying her discharge orders and interfering with her opportunity to seek commissioning in the Army Chaplains Corps. She left the Navy after her failure of selection (*FOS*) of promotion to the grade of Lieutenant Commander ("LCDR"), was commissioned as an Army chaplain, promoted to Major (the Army equivalent of LCDR), and retired April 2008 after completing 20 years commissioned service. She lives at 3305 N.W. Cache Rd., LAWTON, OK 73505-3875.

CH Carson's injuries include being denied a fair opportunity to compete for promotions in the Navy, denial of promotion in the Navy, delaying her promotion to Officer pay grade 4 ("O-4")²⁶

²⁶ Military services often identify rank with its equivalent paygrade, e.g., O-4, MAJ or LCDR. The "O" stands for "Officer" and the number equates to the grade above entry level, here 4.

(Major) because she had to essentially start her career over again in the Army, and denial of promotion subsequently to O-5, and the financial delay in bringing her to and releasing her from active duty as mentioned above.

10. GREG DEMARCO (*Adair*) resides at 835 Terrace Ave., Virginia Beach, VA 23451. He served as an enlisted Navy “hard hat” deep sea diver from 1972 to 1981 when he left the Navy for seminary. He was commissioned as a Non-liturgical chaplain in 1983 and remained in the Navy Reserve until he was recalled to active duty in 1987. He was promoted to Lieutenant Commander in 1993 and remained on active duty until 1998. His last duty assignment was in Naples, Italy, from October 1995 to June 1998. In December 1997, he was criticized by the liturgical command chaplain for ending his prayers “in Jesus name”. When he insisted on praying in accordance with his beliefs and religious tradition, as allowed under Navy regulations and federal statute, the Liturgical command chaplain rated him in a way that made him non-competitive for promotion. This rating was based on faith group prejudice and bias and deliberately ignored CH De Marco’s service to the Naples Protestant community including the fact that the congregation had grown from 25 to over 200, making it the largest Protestant worshipping community in the Navy in Europe. His evaluation also ignored the large corresponding increases in the religious education and children’s programs due to CH De Marco’s efforts.

The systematic faith group hostility and prejudice evidenced at Naples made it clear to CH De Marco he had no chance for promotion, his Navy career was effectively finished and the Navy’s continuing covert prejudice would make his life unbearable. He chose to retire early to save further humiliation, minimize his personal and professional injury, and minimize the disruption and damage to his family. The Navy’s actions were a constructive discharge based on religious

prejudice. But for this hostility, CH De Marco would have successfully continued his Navy career as evidenced by his outstanding record prior to Naples.

11. CH (CDR) TIMOTHY DEMY (*Gibson*) resides at 7 Ellen Road, Middletown, Rhode Island. He was commissioned in the CHC in 1981 and came on active duty in July 1984. He is endorsed by the Bible Churches Chaplaincy. He was promoted to LCDR in 1988 and CDR in 1993. CH Demy was the honor grad for the Chaplain Advanced Course and was assigned to the Chief of Chaplains Office in the summer of 1990 where he worked in the detailing office first as admin officer and then as the junior detailer. After a tour with the Coast Guard Headquarters, he was assigned to the Naval Chaplain School as the supervisory course officer, followed by attendance at the Naval War College from March 1998 to 99. He was the first chaplain to be designated the honor graduate. He was subsequently assigned to teach at the Naval War College.

CH Demy, although promoted to CDR, FOS to CAPT. He was told this was due to “lack of operational time.” However, his fitness reports all show top 1%, he worked for two Chiefs of Chaplains, and he was specifically requested to go to the Chaplain School and the Naval War College. Any lack of “operational” time was not due to a failure on his part, but a result of the system which assigned him to these important positions based on his demonstrated abilities and skills. The failure to select CH Demy in light of his outstanding record can only be attributed to denominational biases against Non-liturgicals. CH Demy was selected for involuntarily retirement by the FY08 Commander selective early retirement (“SER”) Board and retired in June 2008.

12. PATRICK T. DONEY (*Gibson*) resides at 121 Buckhorn Dr., Greenville, SC 29608. The Navy turned down CH Doney’s first application to become a Navy chaplain in 1971. He was endorsed by the Associated Gospel Churches. After the intervention of his endorser and Senators,

who were on the Armed Forces Committee, the Navy offered him a commission in the Naval Reserve. Several years later at a chaplain's convention, CAPT Eugene O'Brien, a Catholic priest who ran the accessions branch at the time CH Doney originally applied, told CH Doney: (1) the reason the Navy turned him down the first time was because he was a graduate of Bob Jones University; and (2) he was commissioned only because several senators with important posts on the Armed Services Committee intervened.

From 1972 until 1977, CH Doney volunteered numerous times for short active duty tours in the hope of establishing a record and eventually being allowed to come on active duty. It was not until he spoke with RADM O'Connor at the conclusion of a short term active duty assignment in 1977 that he was allowed to come on active duty in 1978.

His first assignment was with the First Marine Division at Camp Pendelton, followed by assignment to a guided missile cruiser, the USS LEAHY. Although he was promoted in the Reserves in 1977, he was considered for promotion to the grade of CDR on active duty after a relatively short period of time and was FOS several times, which led to his return to the Naval Reserve in 1983. The Navy also turned down his request to transfer from the Reserves to the Regular Navy.

After returning to the Reserves, CH Doney continued to volunteer for numerous short term assignments. One of those, shortly after returning to the Reserves, sent him to Adack Island in the Aleutians to meet a need for a Protestant chaplain at a Navy base. A lady at Adack asked CH Doney to baptize her by immersion, which he did. The Catholic priest at Adack later expressed his anger to CH Doney and accused him of stealing sheep because the lady occasionally attended Mass. Although CH Doney explained the lady had requested it and as a Protestant chaplain who believed in baptism by immersion, he had a duty to meet her free exercise needs, the priest

threatened to report him for “proselytizing”.

CH Doney was not selected for promotion to CDR in the Reserves, despite his numerous short, temporary active duty tours and his outstanding record. It is believed this and the Navy’s failure to allow him on active duty was the result of prejudice against him because he was a graduate of Bob Jones University’s seminary, a conservative, evangelical seminary, and because he angered the Catholic chaplain at Adack. The presence of a Catholic on every board ensured he would not receive a fair hearing, either on active duty or in the Reserves.

13. JOSEPH DUFOUR (*Gibson*) resides at 30138 Lilac Rd., Valley Center, California. He is currently assigned to the USS NIMITZ, an aircraft carrier based in San Diego, CA. He entered active duty September 21, 1992, and is endorsed by the Bible Churches Chaplaincy, a Non-liturgical faith group. CH Dufour had a successful and productive career prior to his assignment to the Naval Support Activity at Naples, Italy (Naples) as evidenced by his fitness reports and his promotion to LCDR. He is one of several named plaintiffs who have been victimized by the Navy's oppressive culture of prejudice against Non-liturgical chaplains and faith groups that has come become a pattern and practice of bias at Naples, orchestrated by its Liturgical command chaplains. For example, no evangelical chaplain who has served under his Catholic command chaplain at Naples, CH (CAPT) Rock, has ever been subsequently promoted on active duty. This systematic prejudice at Naples has resulted in a consistent pattern of threats, harassment, and professional and personal attacks resulting in biased fitness reports designed to destroy his opportunities for promotion and a Navy career.

Because CH Dufour challenged CH Rock over his prejudice and bias toward Non-liturgical Protestants and their programs at Naples, on information and belief, CH Rock contacted CH Dufour’s Catholic command chaplain on the NIMITZ, a Boston priest like CH Rock. His new

command chaplain undermined CH Dufour's ministry and career and ensured CH Dufour will FOS to CDR. CH Dufour is currently assigned to Camp Pendleton.

14. FLOYD C. ELLISON (*Gibson*) lives at 535 East J Street, Chula Vista, CA, 91910-6414.

Endorsed by the American Baptist Convention, a Non-liturgical faith group, he was commissioned as a Navy Chaplain in the Naval Reserve in 1972 and reported for active duty in February 1974. CH Ellison had a distinguished career marked by excellent fitness reports, evidenced by his promotion to Lieutenant Commander in August, 1978, CDR in May 1984, and CAPT in August 1991. CH Ellison was selected for involuntary retirement by the fiscal year (FY) 97 SER board and was retired August 1997. In selecting CH Ellison for involuntary retirement despite his outstanding record of service, the SER Board ignored the records of other chaplains with records substantially inferior to his using the improper criteria of faith group affiliation rather than religiously neutral criteria such as military performance and potential. Statistical analysis shows the presence of a selection board member with the same or similar faith tradition as a candidate statistically increases the candidate's chances of favorable treatment by the board, in the SER context, retention. There was no Non-liturgical chaplain board member on his SER board and the grant of civic authority to a chaplain on the board violated the Establishment Clause.

15. LARRY FARRELL (*Adair*) resides at 216 White Oak Blvd., Jacksonville, NC 28546.

Chaplain Farrell is endorsed by the Church of God, Cleveland, TN, a Non-liturgical faith group. He entered active duty in 1984. He was selected for promotion to Lieutenant Commander but, because he is not a liturgical and the Navy's prejudice against his Pentecostal faith, he was not selected for promotion to Commander in FYs 1998, 1999, and 2000, despite outstanding fitness reports and an exemplary career. CH Farrell was forced to retire due to statutory limits on FOS LCDRs.

16. ALAN GARNER (*Gibson*) resides at 7834 W. Hearn Rd., Peoria, AZ 85381.

He was a Chaplain Candidate Officer from January 1989 to April 1992 when he entered active duty as a Navy chaplain. He is an ordained Independent Baptist minister and endorsed by the Bible Churches Chaplaincy.

After an initial assignment aboard the guided missile cruiser USS LEAHY, CH Garner was assigned to the Naval Medical Center San Diego, CA. There LT Garner covered more hospital wards than any other chaplain on staff, facilitated two support groups, and helped train hospital staff in patient pastoral care. He was handpicked to deploy with a Navy Fleet Hospital for six months as part of the United Nations Protection Forces. He served as Division Officer over nine enlisted Religious Program Specialists (“RPs”) and successfully prepared his department for a major inspection. CH Garner was recognized for his excellent performance with outstanding fitness reports until the new Catholic command chaplain, CH (CAPT) Young reported to the Medical Center six months before LT Garner was scheduled to leave. In CH Garner’s final fitness report for his tour at the Medical Center, CAPT Young deliberately ignored LT Garner’s outstanding performance and accomplishments, downgraded him in the areas of professional expertise and teamwork, and placed LT Garner in the “must promote” category, a significant reduction from his previous rating of “early promote.” CH Young never offered any explanation for the poor marks or the lower promotion recommendation. Compared with his previous outstanding fitness reports, CH Young’s evaluation cast CH Garner’s performance in a bad light.

At the same time CH Young downgraded CH Garner’s performance, the Medical Center recommended CH Garner be given the Navy Commendation Medal for his outstanding performance in actions that occurred during the same time frame in which CAPT Young found CH Garner’s performance deficient. While CH Young was savaging CH Garner’s career, the

Medical Center was thanking and rewarding him for the same performance of duty. CH Young's evaluations resulted in CH Garner's FOS to LCDR, a fact acknowledged by the Bureau of Personnel ("LT Garner's fitness reports for the period 1 February 1996 to 20 July 1996 display a negative trend in performance and severely impacted the competitiveness of his record."). CH Garner was forced to leave active duty, but was subsequently promoted to LCDR in the Naval Reserve and served in Iraq when his reserve unit was activated. He retired in the Naval Reserve in January 2009.

CAPT Young has been the subject of several investigations, including allegations he favored Catholic chaplains in his ratings while trashing the careers of Protestant chaplains.

17. DAVID GIBSON (*Gibson*) resides at 6008 Yellow Rose Dr., Pensacola, FL 32526. He is endorsed by the Church of God, Cleveland, Tennessee, a pentecostal, non-liturgical denomination. He was commissioned as a chaplain in July 1984. He began active duty October 31, 1986, and was subsequently promoted to LCDR. Despite outstanding fitness reports and a wide variety of challenging assignments, he was not selected for Commander by the FY99 and subsequent promotion boards. At the same time it denied CH Gibson promotion to Commander, the Navy selected other chaplains with inferior records based on the Navy's bias against non-liturgical chaplains and preference for liturgical chaplains.

CH Gibson was subsequently selected by the FY03 Commander board. That board had as a member an officer who had formerly rated and/or supervised CDR Gibson. CDR Gibson believes that had line officers been making the selection decisions when he was first considered for CDR, he would have been selected based on his record. CH Gibson's promotion history reflects that of other Pentecostal and charismatic Navy Chaplains. This can be attributed to the CHC's Catholic reserved seat policy and stacking boards with liturgical chaplains, many of whom disapprove of

Pentecostal theology and worship practices.

18. JOHN GORDY (*Gibson*) lives at 516 Sage Rd. North, White House, Tennessee. He began his military career as an enlisted man in the U.S. Marine Corps from January 1978 to December 1981. He then attended college and seminary and was commissioned as an Ensign in the CHC in 1987 as a Chaplain Candidate. He entered active duty in August 1988, endorsed by the Church of God, Cleveland, Tennessee. He compiled an excellent record and was promoted to LCDR in September 1998. He was selected for and successfully completed postgraduate school. When he reported to NSA Naples, the Catholic command chaplain, CAPT Ronald Buchmiller told CH Gordy, "You know I have a reputation for ruining evangelical careers." CH Buchmiller is the same command chaplain who ended the careers of several other Non-liturgical chaplains assigned to Naples. CH Buchmiller then proceeded to rate CH Gordy in a manner that guaranteed he would not be selected for CDR, and CH Gordy was subsequently FOS to CDR. CH Gordy's failure to be selected despite his outstanding performance, as indicated by his record prior to Naples, his promotion to LCDR and selection for postgraduate school, is due to the CHC's tolerance of the anti Non-liturgical attitude exhibited by and boasted about by CH Buchmiller.

At his 2003 deposition in Naples, Italy, CH Gordy testified that when he first heard of the *Adair* and *CFGC* lawsuits, he dismissed their claims. However, he changed his view after his assignment at Naples where he was confronted by CAPT Buchmiller's anti-evangelical prejudice and hostility and the CHC's and Navy's willingness to condone the prejudice and hostility rather than address it decisively. CH Gordy retired due to his FOS.

19. RICHARD F. HAMME (*Adair*) originally identified by the pseudonym John Witherspoon, resides at 15826 Vista Dr., Montclair, VA 22025. He enlisted in the U.S. Navy in 1971, was selected for and entered the U.S. Naval Academy in 1972, and upon graduation in 1978, was

commissioned as a Second Lieutenant in the U.S. Marine Corps. He entered flight school in 1978, graduated as an aviator in 1980, and served with the Marine Corps, including participation in the Beirut, Lebanon peace keeping mission in 1983, and left active duty in January 1984 to begin seminary. He was accepted into the Navy's Theological Student Program. After graduation from seminary in May 1987, he was commissioned as a Chaplain and entered active duty in the CHC August 1987.

After a year and a half as a staff chaplain with Destroyer Squadron 4 in Charleston, SC, CH Hamme was reassigned to Destroyer Squadron 6 as its supervisory chaplain, a LCDR's position. The CHC contacted him to tell him it wanted him to go to post-graduate schooling and then selected him for a management and administrative degree at the Lyndon Baines Johnson School of Public Policy at the University of Texas, a prestigious assignment because there was only one such opportunity and the post graduation utilization tour was to a high level staff. Shortly after starting his post-graduate schooling in 1991, CH Hamme was notified of his first non-selection to LCDR. The LCDR selection rate that year was 70%. He was told the Deputy Chief of Chaplains, RADM White, reviewed his record and submitted a report to the GAO saying his non-selection was a mistake, there was nothing in his record which warranted his non-selection, and he would probably be selected by the next board, thereby justifying his continuation in post-graduate school at government expense. CH Hamme again FOS for promotion to LCDR despite his outstanding record evidenced by letters from Admirals who reported he was among the top chaplains they had served with. The selection rate for his year of consideration was 65%.

CH Hamme was separated from active duty in March 1993 and entered the Reserves. He was selected for LCDR in the Reserves in 1993, although the selection rate the year he was selected was only 30%. A board member told him he was the second chaplain selected because of his

outstanding record. CH Hamme asked to return to active duty after his promotion in the Reserves, but his request was denied; he was told the regulations did not allow for the recall of Reservists above the grade of LT.

CH Hamme initially joined the suit under the pseudonym JOHN WITHERSPOON because when the suit was filed, he was being considered for promotion to Commander and subsequent consideration by the APPLY board which selects Reservists for the limited number of pay billets. At this time, another plaintiff overheard two senior Reserve officers discussing CH Hamme and his outstanding career. The witness heard them threaten to destroy CH Hamme's career if they had the opportunity. The APPLY board did not select CH Hamme for a paid Reserve billet. He was subsequently selected to Commander in the Reserves and was involuntarily retired July 2004 after 28 years of commissioned service.

CH Hamme's FOS for active duty LCDR can be attributable only to denominational prejudice, given his Naval Academy training, excellent record as a Marine aviator, outstanding reports as a LT, selection as a supervisory chaplain while still a LT, his selection by the CHC for post-graduate education, and the Deputy Chief of Chaplain's report to the GAO. His selection for post-graduate school by the CHC is especially indicative of his strong record because the CHC selected him for post-graduate study in an area where the post-graduation assignment would be a career-enhancing high level staff position responsible for policy and management. His early selection for LCDR as a reservist when the LCDR selection rate was 30% speaks volumes about the strength of his record.

20. FURNISS HARKNESS (*Adair*) is a Non-liturgical Navy Reserve chaplain residing at 400 Green Acres, Memphis, TN 38117. He entered active duty in March 1987 under the endorsement of the Non-liturgical Christian Church (Disciples of Christ). Although he had outstanding fitness

reports, he found that the Navy had two systems, one for Liturgical chaplains and one for Non-liturgical chaplains. After unsuccessfully attempting to obtain the same information concerning graduate school that was provided to liturgical chaplains, he realized that those efforts to obtain equal treatment had effectively ended his Navy active duty career. He left active duty in June 1995 and attempted to return to his Reserve status. In an illegal act of retaliation, the Navy CHC issued a new instruction requiring the CHC's approval [Of What?] in an attempt to deny his Reserve affiliation. CH Harkness asked the Navy Inspector General (NIG) to investigate the legality of that attempt. The NIG subsequently found the CHC's actions and its "new policy" to be without authority, vindicating CH Harkness's position. The report admonished several senior chaplains for retaliation. The CHC's retaliatory and discriminatory actions, based on religious prejudice, precluded CH Harkness from drilling for a year and a half.

As a further act of retaliation, the Navy failed to select CH Harkness to the grade of Commander in mid-2000, despite his outstanding record and his graduation from the Naval War College. The reason for his non-selection was his participation in this lawsuit, his previous attempts to obtain equality in treatment, and his prior complaint to the NIG concerning the CHC's illegal attempt to deny him Reserve affiliation. One of the board members on his selection board was implicated in his prior successful NIG retaliation complaint.

Although eventually selected for Commander, CH Harkness was illegally denied promotion to Captain by a selection board composed contrary to the precept. The Navy's further acts of retaliation include denying him active duty for training despite being picked for such a position by the APPLY board, although the need still existed and the command requested him. The Navy continues to deny him promotion as an act of retaliation despite his outstanding record and achievements unmatched by other Reservists, including special active duty as the manager of

Navy Support for the National Boy Scout Jamboree.

21. ROBERT A. HATCH, JR (*Gibson*) currently lives at 2245 Autumn Rd., Poplar Bluff, MO, after retiring as a US Army chaplain. He is endorsed by the American Baptist Churches of the USA.

CH Hatch began his career as a Navy Chaplain in 1983. After completion of his initial three-year tour, he was not allowed to continue on active duty despite outstanding performance reports and recommendations for his retention. The Commanding Officer, Marine Air Control Group 18's memo to the Commanding General, First Marine Aircraft Wing, described CH Hatch as "By far, one of the best Chaplains that I have encountered."

After separation from active duty in 1986, CH Hatch served in the Naval Reserve until 1989. CH Hatch's excellence and value to the CHC is evidenced by the fact that in his three-year period as a Reservist, he had 10 active duty training assignments when the norm is one per year. Included in this active duty training was a 103 day period (4/3/88 to 7/15/88) in the Chief of Chaplains Office to coordinate the events surrounding the retirement of the Chief of Chaplains, RADM McNamara, and the assumption of the office for the new Chief, RADM Koeneman. RADM Koeneman rated CH Hatch for this period and recommended he be retained and promoted.

CH Hatch is one of the large number of Non-liturgicals who were never allowed to complete their career because of the CHC's efforts to limit the number of Non-liturgical chaplains. He was forced out by the Navy's illegal prejudice without getting an opportunity for promotion. He subsequently became an Army chaplain.

While at Ft. Stewart, GA, in 2001, CH Hatch learned of the litigation against the Navy from a former Navy Chaplain who is now an Army chaplain and plaintiff in the CFGC litigation. After

reviewing the issues and evidence related to this action including the Stafford Report, the Ellis Report and the *Adair* Class Action Complaint, he became aware the CHC's biased policies favoring Liturgical chaplains and prejudicing Non-liturgical chaplains such as himself was the reason chaplains with weaker records were allowed to continue on active duty and he was not, despite his strong record and endorsements. Prior to this time there was no way for him to know 1) he had a cause of action and 2) the Navy's proffered reasons for his non-continuation were lies and deceit designed to conceal the Navy's prejudice against Non-liturgical Chaplains. The Navy's official policy was that its career continuation system was fair and its criteria unrelated to faith group. Until he read the cited documents, he had no evidence the Navy and its CHC's misrepresentations were part of an extensive program to conceal their illegal prejudice.

22. GARY HEINKE (*Gibson*) resides at 2030 Rockvale Road, Lancaster, Pennsylvania. He was commissioned as a chaplain in March 1982, endorsed by the Baptist General Conference. CH Heinke's outstanding career is reflected in the fact the CHC first selected him for postgraduate school (Duke University) and then as its first chaplain to attend and graduate from the Marine Corps Command and General Staff College (C&GSC), an opportunity for which only a few officers with outstanding records are selected each year. Following completion C&GSC, he was assigned to the USMC Combat Development Command, Quantico, Virginia. Although he was only a LCDR, he was initially assigned to a CDR billet (the Marine security battalion). During that assignment, the command chaplain was relieved for cause. Lieutenant General (LTG) Krulak, the base commander and Deputy Commandant of the Marine Corps, assigned LCDR Heinke as the base's deputy command chaplain, a CDR billet, placing him over several senior Liturgical chaplains. When CH Heinke received orders to duty on a ship, LTG Krulak used his influence to change those orders so CH Heinke would remain at Quantico to keep the momentum

in the evangelical Family Worship Center and ministry, and to provide stability in the Chaplain Department.

Despite being selected for postgraduate education, the Marine Command and General Staff College, his assignment to two CDR billets and his reputation as demonstrated by LTG Krulak's intervention in changing his orders and assigning him over more senior chaplains, CH Heinke FOS to CDR in FY93. Subsequent to his failure of selection, CH Heinke was told that the president of the board, RADM White, did not like LTG Krulak and because of LTG Krulak's recognition of CH Heinke as an outstanding chaplain, used the board process to ensure that CH Heinke would not be promoted. In other words, CH Heinke's FOS was RADM White's perverted means of retaliation against LTG Krulak and the Liturgical hostility toward successful evangelicals like CH Heinke. A board recorder, without divulging board proceedings, commented to CH Heinke that "I thought you were in, you had made it, but something happened at the last minute, I can't explain it, you did not make it."

Before the next board, the CHC assigned CH Mike Burt as the command chaplain at Quantico shortly before CH Heinke and LTG Krulak were scheduled to leave, and just before CH Heinke's fitness report was due. CH Burt, a Liturgical chaplain, indicated he was an emissary from RADM White. He said his mission was to make sure CH Heinke did not get promoted. CH Burt said, "We can't let you leave here [Quantico] without being punished." When asked, "Punished for what?" CH Burt said, "You know, the evangelical ministry here and Krulak." When asked who "we" referred to, CH Burt replied, "The Chief of Chaplains." CH Burt also said, "If you try to fight this, you'll lose." CH Burt marked down CH Heinke's fitness report one letter grade. When CH Heinke wrote a letter to GEN Krulak, who had become the Commandant of the Marine Corps, to protest the lowering of his fitness report grade, he received a letter from

CH (CAPT) Pucherrelli stating that if CH Heinke had issues he needed to submit them through CH Pucherrelli. CH Pucherrelli had been at Quantico a portion of the time CH Heinke was there. CH Heinke had been told, "You were either one of Puche's boys or not...." Since CH Heinke had been in conflict with CH Pucherrelli over numerous issues, CH Heinke was not one of his boys. CH Heinke wrote a follow on letter to GEN Krulak, but received no response.

The entire time CH Heinke was at Quantico, there was constant conflict over approaches to ministry between the Liturgical chaplains, who held the higher ranks, and the Non-liturgical chaplains, who performed most of the ministry. The Non-liturgicals started a "Family Worship Center," a contemporary worship service initially located in a remote location, the high school cafeteria. The service grew and had to be moved to larger and newer accommodations, and competed with the base General Protestant Service. LTG Krulak started to attend the Family Worship Center on a regular basis, which created jealousy among the senior Liturgical chaplains. The tension and conflict between Liturgicals and Non-liturgicals was evident in staff meetings and assignments. The Quantico chaplains' office was a hostile work environment which necessitated LTG Krulak's personal intervention. The hostility continued after he left.

In addition to putting CH Heinke over chaplains who were senior in grade and having his orders change to enable him to stay at Quantico, LTG Krulak also awarded CH Heinke a Meritorious Service Medal, which angered Liturgical chaplains at Quantico.

The reason for CH Heinke's failure of selection was due to the CHC's religious hostility towards outstanding Non-liturgicals and, on information and belief, RADM White's personal hostility and retaliation against GEN Krulak. That RADM White was able to manipulate the system to deny CH Heinke's promotion (and therefore his career) without accountability shows the CHC promotion system violates the Establishment and Due Process Clauses, *i.e.*, secret career

ending votes with no accountability.

Having FOS twice and facing separation with a loss of pension and other benefits, CH Heinke retired under the Temporary Early Retirement Act May 1, 1997. This was a constructive discharge.

23. ROBERT L. HENDRICKS (*Gibson*) lives at 243 Patricia, San Antonio, Texas. He was commissioned as a Navy Chaplain September 9, 1982, endorsed by the Southern Baptist Convention and reported for active duty October 5, 1982. Despite outstanding service as reflected in awards of the Navy Commendation and Navy Achievement Medals, he was twice FOS to LCDR. He was separated after his second FOS in 1991. CH Hendricks has continued to serve as a chaplain in the Naval Reserve where he was promoted to LCDR, but the Navy failed to select him for CDR.

In 2002, CH Hendricks began reading documents related to this action including the Stafford Report, the Ellis Report and the Class Action Complaint. He became aware that the reason other chaplains with weaker records were promoted was the CHC's policies which favored Liturgical chaplains and prejudiced Non-liturgical chaplains such as himself. Prior to this time he had believed the Navy's false official statements its promotion system was fair, all records were competitive, and faith group was not important. Because of the secrecy of the promotion board process, and the deceit and concealment by the Navy, there was no way for him to know prior to reading the above cited documents he had a cause of action.

24. FRANK JOHNSON (*Gibson*) currently resides at 2789 Noble Fir Court, Woodbridge, VA. He was commissioned as a Navy chaplain in 1981 and entered active duty in 1985, endorsed by the Southern Baptist Convention, a Non-liturgical denomination. He was promoted to the grades of LCDR and CDR based on his outstanding records and was personally selected for important

assignments by the Chief of Chaplains based on his reputation and record. He was assigned as the recorder of the FY97 Chaplain CDR promotion board. Allegations of denominational prejudice and misconduct resulted in both Naval Inspector General and Department of Defense Inspector General investigations into the FY97 and 98 boards. CDR Johnson was interviewed by the investigators. Subsequently, he was considered for promotion to CAPT for which he FOS. Because of his outstanding record as compared to others who were selected, there is no explanation for his FOS other than retaliation for the testimony he gave under oath concerning the FY97 Chaplain CDR promotion board. CDR Johnson retired in 2005 when, after FOS to CAPT, it became obvious his career had reached a dead end as a result of the CHC's prejudice.

25. MARK R. JOHNSTON (*CFGC*) enlisted in the Navy in 1973 and was honorably discharged as a 3d class petty officer in 1977, endorsed by *CFGC*. After completing divinity school, he applied for and was accepted into the CHC in March 1987. Despite recognition for his outstanding work at Camp LeJeune, NC, he was denied continuation on active duty after his liturgical Protestant senior chaplain referred to him as a member of a "splinter sect" and told him, "You preach the Gospel too much." The senior chaplain's conduct and attitude toward *CFGC* created a hostile work environment. The Navy's failure to continue him on active duty was based on the CHC's and his chaplain supervisor's religious discrimination and hostility to Chaplain Johnston's religious beliefs and faith group. CH Johnston, still endorsed by *CFGC*, applied for and was commissioned as an Army chaplain. He was stationed at Ft. Sill, OK, when the suit was filed. The Army promoted him to the rank of Major, selected him for post graduate school and assigned him to teach ethics at the U.S. Army's Sergeant Major's Academy, Fort Bliss, Texas, and promoted him to Lieutenant Colonel (LTC), the Army equivalent of Navy Commander. He is currently stationed at Ft. Jackson, S.C. He will be forced to retire because of age before he can be

considered for Colonel (COL).

CH Johnston's injuries include being denied a fair opportunity to compete for a career and promotions in the Navy, denial of promotion in the Navy, delay in his promotion to O-4, O-5, and denial of his ability to retire as a COL because he had to restart his chaplain career in the Army.

26. LAURENCE W. JONES (*Gibson*) lives at 104 River Reach Dr. W., Swansboro, North Carolina. He entered active duty in April 1986. He is endorsed by the Southern Baptist Convention, a Non-liturgical faith group. He was promoted to LCDR in March 1994, and selected for postgraduate school in 1996. He completed his Master's Degree in Ethics at Duke University's Divinity School in 1998. With him at Duke were five other Navy chaplains: another male Southern Baptist, two female Southern Baptists, a minority male, and a Liturgical chaplain. Of the six, CH Jones and the other Southern Baptist male were FOS to CDR in 2000. Despite an excellent record including postgraduate schooling, and despite the Secretary of Navy's guidance such advance schooling was to be considered in a positive light, CH Jones was FOS to CDR. Given his record, there is no explanation for his non-selection other than the culture of bias and prejudice against Non-liturgical chaplains and faith groups that permeates the CHC. After discovering the Stafford Report and other evidence of denominational preference in promotions in 2001, CH Jones unsuccessfully tried to join the *Adair* legislation in 2002. CH Jones was statutorily retired due to his FOS to CDR.

27. SAMUEL D. KIRK (*Gibson*) lives at 4627 Rock Elm Woods, San Antonio, Texas 78249. CH Kirk is endorsed by the Southern Baptist Convention. He entered active duty as a chaplain in March 1982 and was promoted to LCDR in 1989. Stationed on Okinawa from 1987 to 1990, CH Kirk increased chapel attendance by 50%. Because of this success he was moved to another chapel. Despite his success in increasing chapel attendance through his preaching and leadership,

he was not given a favorable fitness report by the senior command chaplain, CH O'Brien, a Catholic priest who gave superior ratings to other Catholics but graded down Protestants such as CH Kirk. The basis for the differing treatment appears to have been faith group preference.

This illegal and prejudicial treatment resulted in his FOS to CDR which terminated his career. He left the Navy after 12 1/4 years active duty. CH Kirk then affiliated with the Reserve, where he is still serving as a Navy Chaplain.

28. KLON K. KITCHEN, JR. (*CFGC*)Klon K. Kitchen, Jr. began his active duty as a Navy chaplain in June 1987. Despite outstanding fitness reports and participation in Operation Desert Storm and two hurricane relief operations, he was twice FOS for LCDR based on his religious beliefs as reflected by his *CFGC* endorsement. Following his first non-selection to LCDR, RADM Muchow, the Navy Chief of Chaplains, reviewed CH Kitchen's record and assured CH Kitchen he would be selected for promotion the next time his record was reviewed. CH Kitchen was not selected for LCDR, and was separated for two FOS. This would normally have precluded his being able to serve in another Armed Force. The Army Chaplain Corps contacted him after his separation from the Navy and asked if he would be interested in a commission as an Army Chaplain, an invitation CH Kitchen accepted. He is now an Army chaplain and has been promoted to the rank of Major. He lived in Honolulu, HI, when the suit was filed, but is currently assigned to a U.S. Army Headquarters unit in Korea.

CH Kitchen's injuries include being denied a fair opportunity to compete for a career and promotions in the Navy, denial of promotion in the Navy, delay in his promotion to O-4 and subsequent grades and ranks because he had to restart his chaplain career in the Army.

29. FRANK S. KLAPACH (*Gibson*) lives at 3810 S.E. Conifer Park Dr., Port Orchard,

Washington. He entered active duty as an enlisted sailor May 11, 1970, and was released from active duty in 1974. When he entered the Navy in 1970, CH Klapach was a Catholic. During his enlistment, he had what Protestants call a “born again” experience. This concept and experience is fundamentally at odds with Catholic teaching. At the time of his born again experience, CH Klapach’s Catholic pastor was CH Thomas Kuhn, who became angry when he discovered the change in then seaman Klapach’s faith perspective and his subsequent joining the Assemblies of God, an evangelical, Non-liturgical faith group.

When he left the Navy in 1974, CH Klapach continued in the enlisted reserve, attended college and seminary, and with an endorsement by the Non-liturgical and pentecostal Assemblies of God, was commissioned in the Chaplain Candidacy Program January 5, 1976. He entered active duty as a Navy chaplain December 31, 1977, and was subsequently selected for post-graduate education and promoted to LCDR.

The first time the Navy considered CH Klapach for promotion to CDR, CH Kuhn, his former Catholic pastor, was a board member. Despite an outstanding record, the board with CH Kuhn as a member did not select CH Klapach,²⁷ but he was selected on his second look.

After promotion to CDR, CH Klapach reported to the Puget Sound Naval Shipyard (“PSNS”) as the senior chaplain in rank, experience and with the advantage of a postgraduate degree. Yet the PSNS command, with the reported concurrence of the Chief of Chaplains, RADM Muchow, placed CDR Klapach under a Catholic LCDR chaplain. There is no other explanation for this gross breach of military discipline and order except the Navy’s overt culture of religious prejudice against Non-liturgical chaplains and their faith groups and its preference for Catholics.

1 The Navy Inspector General’s investigation of CH Washburn’s failure to be selected for CAPT produced testimony showing that one hostile board member could guarantee that a chaplain would not be selected for promotion.

Despite his completion of postgraduate schooling, an outstanding career and military record, CH Klapach was selected for involuntary early retirement as a CDR. His improper FOS to CDR in his first consideration prejudiced his record before the SER board. The Navy ignored the records of chaplains with substantially inferior records in selecting him for separation under the SER program. The Navy's basis for selecting CH Klapach was his Non-liturgical faith group identification.

30. TOM KLAPPERT (*Gibson*) resides at 7699 Kuhn Road, Greencastle, Pennsylvania. He began his Navy career upon graduating from the Naval Academy in 1973. He served five years in the Marines, rising to the rank of Captain (O-3), and remained in the Reserves from 1978 to 1982 while he attended seminary. Endorsed by the Independent Fundamental Churches of America (now Bible Churches Chaplaincy), he was commissioned as a chaplain LTJG in September 1982, promoted to LT in 1983, LCDR in 1991 and CDR in 1998.

CH Klappert was assigned to Quantico, Virginia at the Marine Corps Headquarters from June 1992 to June 1995. While there, he was embroiled in the conflict between the Liturgical senior chaplains. CH Klappert became a central figure in the investigation of the Quantico command chaplain for serious misconduct resulting in the relief of the command chaplain for cause. This caused resentment among the senior Liturgical chaplains at Quantico as well as others in the CHC leadership, who resented the fact the command chaplain was caught and disciplined.

After Quantico, he was assigned to the Portsmouth Naval Yard. While there, he experienced great difficulty with a female organist and music director who caused division in the congregation and other difficulties. CH Klappert had finally determined to terminate her employment because of the division she was causing in the chapel; however, shortly prior to his scheduled rotation date from Portsmouth and before he was able to take that action, the organist filed a complaint alleging

discrimination and harassment against CH Klappert. Although she initially obtained an ex parte protective order limiting CH Klappert from contact with her, at a subsequent hearing the judge vacated the order, found there was no substance in the complainant's allegations and "this is not sexual harassment." Nonetheless, the Navy began an investigation. Although CH Klappert submitted 16 witnesses' names who would verify the falsity of the allegations, the resulting investigation only interviewed 6, and perverted the testimony of those who had made statements so the meaning was entirely opposite to the witnesses' testimony.

Although the base commander had initially supported CH Klappert and expressed his confidence the investigation would refute the false allegations, it became apparent to CH Klappert that his commander had been told supporting CH Klappert was not in the base commander's career interests. CH Klappert believes this was retaliation for his previous opposition to religious oppression at Quantico and other places. It became obvious to CH Klappert this was retaliation for his involvement in the relief of the Quantico command chaplain, his career was over and he was not welcome in the CHC, and he was a target because of his previous success. Faced with an expensive and protracted fight should he choose to dispute the charges legally, he submitted his resignation. His discharge was involuntary because it was motivated by coercion and premised on retaliation.

31. JAN C. KOHLMANN (*Gibson*) was a U.S. Army Chaplain stationed at Ft. Sill, OK, when he joined to lawsuit. He currently resides at 928 W Vine Street, Radcliffe, KY 40160.

CH Kohlmann began his naval career as an enlisted torpedo man aboard a fast-attack submarine from 1970 to 1974, reaching enlisted grade E-5 when he was 19 years old. He became a Chief Petty Officer (E-7) in the Reserves in 1982. After completing college, CH Kohlmann was initially commissioned as an Ensign (O-1) in the Chaplain Candidate Program in June 1984 while

attending seminary. He was then commissioned as a LTJG Chaplain in the Reserves in July 1986 and entered active duty May 25, 1988 as a LT. He is endorsed by the Bible Churches Chaplaincy.

When he expressed his view of certain subjects based on his understanding of scripture, he was told by his senior chaplain (CAPT) that “the Navy CHC did not need any prophets” and this was Navy CHC policy, not just the senior Chaplain’s. Despite his good fitness reports, he was twice FOS to LCDR, primarily on the basis of the Navy’s bias against Non-liturgical chaplains and their faith groups, and its secret voting system without accountability that encourages denominational bias.

CH Kohlmann was separated on September 30, 1995 after he twice FOS to LCDR. He remained in the Naval Reserve from January 1996 to December 1997. He entered active duty as an Army chaplain on January 12, 1998 and retired in June 2007.

While assigned to Korea as an Army chaplain, he heard of the Navy chaplain lawsuits and requested information. After reading the *Adair* Complaint, he understood the Navy had concealed its prejudicial policies by representing its promotion system was free of bias and denying all allegations to the contrary. This concealment and deceit precluded him from discovering the basis for his cause of action until he was informed of the chaplain litigation, well after the *Adair* plaintiffs had filed their action.

32. ALLEN L. LANCASTER (*Gibson*) resides at 172 North Liberty Spring Rd., Suffolk, VA 23434. His case represents a prime example of the Navy’s unconstitutional hostility and prejudice toward its Non-liturgical chaplains. CH Lancaster began his naval career in 1957 as an enlisted sailor, serving on active duty until 1961 and thereafter in the Naval Reserve until August 1980 (23 years) when he was commissioned as a Navy Chaplain. Endorsed by the Associated Gospel

Churches, an evangelical, Non-liturgical faith group, he then spent 21 years as a Navy Chaplain.

After completing Chaplain School, his record shows a truly outstanding career, with every fitness report showing grades of "A" for all performance categories and all recommendations for "early promotion." He was promoted to LCDR.

Just prior to his first time in the primary zone for selection to CDR, CH Lancaster was selected to attend the Chaplain Advanced Course on the basis of his stellar record, a course which is normally available only for CDRs or those selected to be CDRs. In 1991, he was not selected for promotion to CDR. Nonetheless, because of his strong record, CH Lancaster was assigned to a high visibility position as chaplain on the USS SAIPAN and was selected for promotion to CDR his second time in zone.

Knowing he would be in the zone for CAPT in 1996, CH Lancaster reviewed his official file and found it was missing an outstanding fitness report dated July 1995 from another high visibility position. His rating officer sent a certified true copy of the missing July 1995 report to the Chief of Naval Personnel on June 19, 1996. When CH Lancaster again reviewed his official file microfiche to make sure his record was complete, his July 95 fitness report was still missing. In February 1997, CH Lancaster again sent a copy of the July 95 report to the Navy CHC detailer for inclusion in his file. Following his fourth attempt to ensure his file was complete before the Chaplain CAPT selection board met, the detailer's office told CH Lancaster his missing report was in his records. CH Lancaster was not selected for CAPT and then discovered his July 95 fitness report was still missing, despite his four attempts to provide the missing report and the detailer's assurance the record was complete.

Whether the board actually reviewed CH Lancaster's record is a question. The promotion board's senior recorder is supposed to notify a chaplain's command if a record before the

promotion board is incomplete. After the board, CH Lancaster asked the CAPT selection board's senior recorder if his record was complete. CH Epperson replied that all the records were complete. However, a review of his record showed the July 95 report was still missing. CH Lancaster's unit reported it had received no communication from the CHC indicating his record was not complete during the time the promotion board met. Several weeks later, he contacted board member CAPT (now RADM) Barry Black who said, "I do not recall anyone not considered due to a missing report." How could the board have reviewed CH Lancaster's record if all the records before the board were complete, none were missing, yet his record was incomplete?

In November 1997, en route to his new assignment to Camp Lejeune, North Carolina, CH Lancaster stopped in Washington D.C. to again attempt to complete his record. He was introduced to LCDR Burdec, Naval Personnel Officer Records Section, who took the report and said, "I will personally ensure that it gets in your file." However, when the next Chaplain CAPT board convened in May 1998, it notified CH Lancaster's unit his official record still lacked the July 1995 fitness report. Deployed with the Marines at the Twenty-Nine Palms, CA, training center, CH Lancaster called Camp Lejeune. CH (CDR) Cash forwarded the missing report to the board by fax (January 1997). The July 95 report still did not reach his official record, a fact the BCNR noted in denying CH Lancaster's subsequent request for a new promotion board. The Navy retired CH Lancaster as a CDR October 31, 2001 after 44 years of Naval service.

Overt and deliberate prejudice against Non-liturgical Chaplains and their faith groups is the only explanation for the consistent failure of seven documented attempts to get an important, exceptional fitness report into CH Lancaster's record. CH Lancaster's saga demonstrates a pattern and practice of sabotaging outstanding Non-liturgical chaplains so liturgically dominated Chaplain boards will have an excuse for denying Non-liturgical chaplains a fair opportunity for

promotion, thereby maintaining Liturgical domination of the CHC.

33. MICHAEL LAVELLE (*Adair*) resides at 13921 East Poelstra Street, Vail, AZ. 85641.

Despite an outstanding career as a Non-liturgical Navy chaplain including participation in Operation Desert Storm and a preponderance of duty with the Marines, he was passed over for Commander in FY 1998. Faced with the reality that few, if any, chaplains are subsequently selected once they have been non-selected, and to avoid further humiliation, prejudice and the possible financial injury he and his family might suffer if he continued to remain on active duty, CH Lavelle applied for early retirement under the Temporary Early Retirement Act (TERA) and retired on October 1, 1998.

A Department of Defense (DOD) investigation of that FY 98 board following a complaint of religious discrimination by another chaplain revealed that the board had illegally used faith group as a promotion criterium and promoted liturgical chaplains with records inferior to those who were not selected, including CH Lavelle. See ¶ 52 *infra*. But for the Navy's illegal prejudice and faith group quota system, he would have been promoted and continued his Navy career. The Navy's faith group prejudice and the realities of the Navy's promotion and separation policies constitute a constructive discharge.

34. GEORGE W. LINZEY (*Adair*) resides at 1111 Seacoast Drive #61, Imperial Beach, CA 91932. He was commissioned as a chaplain in the Naval Reserve in April, 1975 and entered active duty as a Navy chaplain on September 6, 1975, under the endorsement of the National Association of Evangelicals. Although he was the youngest chaplain to make Captain, he was selected for early retirement by the FY 1998 SERB. Of the five chaplains selected by that board for early retirement, four were Non-liturgical. In the spring of 1997, RADM Koeneman, a former Chief of Chaplains, made a special trip to visit CH Linzey at Great Lakes Naval Training Center

where he was Command Chaplain. RADM Koeneman told CH Linzey to “get your resume ready”, it was time for him to return to civilian life, and gave him the name and contacts of a church looking for a music minister. As predicted, CH Linzey was selected for involuntary retirement in January 1998. RADM Koeneman’s warning and advise is evidence CH Linzey was personally pre-selected by the Chief of Chaplains (hereafter the “Chief”), rather than by the SER board based on an independent records review. The Chief’s Non-liturgical selections for early retirement, including CH Linzey, were based on religious reasons, rather than on the basis of the selectees’ records as chaplains.

35. JAMES LOOBY (*Gibson*) resides at 1713 County Rd. 318, Early, Texas. He began his military career with the U.S. Air Force in June 1967, where he served until June 1971. He completed seminary in 1975 with a MDiv and entered the CHC in February 1984, endorsed by the Southern Baptist Convention. He served in a variety of assignments and was promoted to LCDR in April 1991 and subsequently to CDR by the FY96 promotion board. However, he was not selected by the FY03 CAPT board. He subsequently learned that a rumor was circulating among the CHC leadership that CDR Looby had been injured on active duty, was ineligible for promotion and had performance problems. On information and belief, this view was shared by RADM Iasiello, the president of his first CAPT board. Because of his record, there is no other explanation for his FOS except reliance on an unfounded rumor contrary to his record and the failure of the CHC promotion system to ensure votes are based on the record, rather than denominational bias or information or opinion outside the record. CH Looby retired from the Navy in 2005.

36. MANUEL MAK (*Gibson*) resides at 5 East Columbia St., Danville, IL 81832. He began his naval career when commissioned as an Ensign in the Theological Student Program in 1982. He

was commissioned as a LTJG in the Navy Reserves in 1984. He remained in the Reserves until March 1986 when he entered active duty, endorsed by the Southern Baptist Convention.

At both First Marine Division and his next assignment at Naval Air Station (NAS) Miramar, he experienced prejudice based on his Non-liturgical faith. He had been at Miramar NAS for a considerable period of time when his new Liturgical command chaplain told CH Mak he had to prove himself. The command chaplain had no basis for his criticism and rated a Lutheran above CH Mak.

CH Mak was selected as the force chaplain to the Naval Support Force Antarctic, a position of great responsibility requiring the ability to function in an independent environment where he supervised six contract chaplains and two religious program specialists. He was FOS to LCDR and forced to leave active duty in 1994. Returning to the Reserves, he was promoted to LCDR in 1995.

His difficulty in the Navy, including his FOS while on active duty, are due to the Navy's prejudice against Non-liturgical chaplains and faiths. In failing to select him for promotion while on active duty, the Navy selected other less qualified chaplains on the basis of their faith group.

In 2001 while attending a Reserve conference, CH Mak began hearing about this Class Action and the allegations in the Complaint. After reading the Stafford Report, the Ellis Report and the Complaint, he became aware that the reason other chaplains with weaker records than his were promoted was the CHC's policies which favored Liturgical chaplains and prejudiced Non-liturgical chaplains such as himself. Prior to that time, he had believed the Navy's representations and its official position its promotion system was fair and faith group was not a factor in promotion decisions. The Navy's disinformation and deceit kept him from knowing he had a cause of action prior to reading the above cited documents.

37. WALKER MARSH, JR. (*Gibson*) resides at 125 Whisperwood Blvd., Slidell, Louisiana. He was commissioned as a Navy chaplain in October 1982, entered active duty in January 1984 and was promoted to LCDR in November 1990. He is endorsed by the Southern Baptist Convention.

In September 1985, he was assigned to the Naval Training Station, San Diego, CA. The liturgical command chaplain, CH Dempsey, told CH Marsh in his initial interview: "I hope that you're not planning on making this a career because you already have three strikes against you. You are the wrong sex, the wrong color and the wrong religion." This indeed was a prophetic utterance. After he arrived at the Naval Training Station, CH Marsh began an alternative Non-liturgical worship service with two other Non-liturgical chaplain LTs, Michael Lavelle and Robert Yourek (with whom the Navy later settled after he filed a claim of religious discrimination, *Yourek v. United States*, U.S. Court of Federal Claims, 98-772C). Despite being restricted by the command chaplain to an unreasonable time (7:00 am) and still being required to participate in the liturgical General Protestant service, under CH Marsh's leadership the Non-liturgical service soon grew to approximately 60 attendees. At this point, the command chaplain terminated the service.

After selection for and completion of postgraduate school, CH Marsh was assigned to the U.S. Marine Corps School of Infantry, Camp Pendelton, CA. The Liturgical command chaplain for the base, CH Ha, established a chaplain meeting schedule and other procedures for the chaplains he "supervised" that created direct conflicts between his demands on their time and the time and priority requirements of the unit commanders to whom the chaplains were assigned and who rated them. Rather than address the resulting conflict he had created with the unit commanders themselves, CH Ha demanded his junior chaplains convince their commanders that he, rather than the commanders, was the appropriate official to determine the responsibilities and priorities for their chaplains.

CH Ha promised CH Marsh he would make sure CH Marsh would never be promoted. CH Ha made it clear the chaplain promotion boards, controlled by Liturgical chaplains, were tools to keep Non-liturgical chaplains in line and subservient to the senior chaplains rather than their unit commanders to whom they were assigned and accountable for ministry. This is another example of the well known CHC's truism, "the line may rate you, but the CHC promotes you."

The CHC's deceit and religious prejudice against CH Marsh and other Non-liturgical chaplains is exemplified in his assignment to the USS BELLEAU WOOD after his first FOS to CDR. His detailer, a member of the board that had not selected him on his first time for CDR, said he needed an unaccompanied tour (*i.e.*, no family) since it would better his chance for selection by the next promotion board because the BELLEAU WOOD assignment would be a supervisory position. When CH Marsh questioned the detailer about his first FOS and the fact that the next board results were not yet known, his detailer said, "Don't you know you'll get picked up?" When he reported to the ship, he discovered his assignment was not a supervisory position. After his second FOS while on the BELLEAU WOOD, the CHC told him the Navy would separate him under 10 U.S.C. § 632 and then gave him a series of changing return and separation dates that resulted in a two year involuntary, extended, unaccompanied tour. He spent two years separated from his family as a result of CHC deceit and religious hostility. This is not the type of service or treatment given to Liturgical chaplains.²⁸

Given his record, his selection for post-graduate schooling, and the promotion of other Liturgical chaplains with far inferior records, the only reason for his non-selection for promotion is the Navy's hostility toward Non-liturgical chaplains and their faith groups, as exemplified by

2 CH Dufour's command chaplain, CH Jerome Dillon, has been reassigned several times before his tour of duty was complete and assigned as command chaplain on several other ships in an apparent effort to boost his record and career.

the consistent reservation of a promotion board membership for Catholics and the over-representation of Liturgical Protestant on CHC promotion boards.

38. DENISE Y. MERRITT (*CFGC*) entered active duty in the CHC in February 1990 with prior enlisted service in the US Marine Corps. She was first stationed at Charleston, SC, followed by Quantico, VA, and the National Naval Medical Center in Bethesda, MD.. The Navy subjected her to prejudice and discrimination as a result of her endorsement by *CFGC*. At Quantico, her liturgical supervisor undermined all CH Merritt's ministry efforts. After scheduling an inter-service chapel concert with Army and Air Force bases in neighboring states, the command chaplain told her to cancel it at the last minute. At Bethesda, her fitness reports cited shortcomings for which she had received no prior notice or counseling and her efforts to correct or challenge the ratings were ignored or rebuffed. She was told by her commanders that the negative comments came from her liturgical senior chaplain, Jane Viera.

At Bethesda Naval Medical Center, she served on twelve hospital committees and performed eight collateral duties. A Catholic chaplain of the same rank served on no committees and performed no collateral duties because he did not speak English well. The liturgical Senior Chaplain rated the Catholic chaplain above CH Merritt.

She left the Navy in May 1998 after her FOS for LCDR and was commissioned as an Army chaplain assigned to Ft. Eustis, VA when the suit was filed. She was promoted to Major and selected for and completed postgraduate school. After completing 20 years of service, CH Merritt retired but was offered and accepted the opportunity to return to active duty. She has retired for the second time and lives at 4405 Biway Cir., Fayetteville, N.C. 28311.

CH Merritt's injuries include being denied a fair opportunity to compete for a full career and promotions in the Navy, denial of promotion to LCDR in the Navy and the opportunity to

compete for other promotions, and delay in been promoted to O-4 because she had to essentially restart her chaplain career in the Army. The CHC placed CH Merrit under abusive and hostile chaplain supervisors who inflicted great stress and strain on her and her family.

39. DAVID MITCHELL (*Gibson*) Dr. Mitchell resides at 142 Prospect Street, Providence, Rhode Island. He entered the Navy CHC in Sept. 1987 with 4 years prior service in the USAF. He was endorsed by the Progressive National Baptist Convention, a Non-liturgical denomination. When he entered the primary zone for promotion to CDR in 2001, he had completed his work for his PhD and had held 3 supervisory billets in which he had received outstanding fitness reports. He was not selected for CDR despite his outstanding record and career.

The president of the CDR promotion board was RADM Iasiello, who as director of the Chaplain School, had supported a female chaplain candidate's unsupported and false allegation that Dr. Mitchell had sexually harassed her during an interview required for the chaplain commissioning program. Although the subsequent investigation proved his innocence, then CAPT Iasiello indicated to Dr. Mitchell that he believed the allegations and would find a way to end Dr. Mitchell's career. The 2001 CDR board with RADM Iasiello as president selected two Catholic chaplains above zone who did not have records as strong as Dr. Mitchell's. Consideration of factors other than the record was improper and forbidden by the Secretary of Navy's instructions as well as Equal Opportunity regulations and the Equal Protection component of the Fifth Amendment. The Navy's secret voting process and small boards allow one board member to prevent a candidate's selection by voting zero with no accountability. Dr. Mitchell believes this process allowed RADM Iasiello to prevent his promotion. Dr. Mitchell retired in 2003, after two FOS to CDR.

40. JAIRO MORENO (*Gibson*) resides at 2009 Oak Brook Dr., Portland, Texas. He entered the

Navy Chaplain Corps in 1987 and is endorsed by the Church of God of Cleveland, Tennessee, a Pentecostal Non-liturgical denomination. CH Moreno is Hispanic, and the combination of being Pentecostal and Hispanic resulted in bias and prejudice throughout his career as a chaplain. In Okinawa, he was assigned to work under the supervision of CAPT Rock, a Catholic command chaplain. In CH Rock's view, CH Moreno should have been Catholic rather than Pentecostal because he was Hispanic. CH Rock subjected CH Moreno to a series of degrading and insulting incidents. CH Rock gave CH Moreno fitness reports that made him non-competitive for CDR. CH Moreno has FOS to CDR numerous times. No Pentecostal chaplain who worked for CAPT Rock has been promoted.

The command chaplain who followed CH Rock was CH Lesak, another Catholic. On arrival, CH Lesak told CH Moreno, "I don't want anything to do with you because you have been passed over" and treated CH Moreno with disrespect and disdain.

The command chaplain who followed CH Lesak gave CH Moreno increased responsibilities and outstanding fitness reports, although nothing had changed in CH Moreno's approach to ministry. CH Moreno's FOS is due in large part to the animosity of his former Catholic command chaplains, who savaged his career with prejudiced fitness reports, aggravated by the policy of always having a Catholic on every promotion board until 2003. CH Moreno was considered for promotion to CDR during that time. CH Moreno is one of two plaintiff chaplains with Hispanic ethnicity. Non-liturgical Hispanic chaplains are not promoted while Catholic Hispanic chaplains are.

41. TIMOTHY D. NALL (*Adair*) is currently a chaplain in the Naval Reserve endorsed by the Baptist Missionary Association of America and lives at 1903 Kimberly Rd., Corinth, MS 38834. He entered active duty as a chaplain in October 1984. Asked to take over a small chapel and

breath life into it, he increased the congregation from 40 to 150 in 13 months. Despite this and other exemplary work, he received no credit for his accomplishments on his fitness reports. As a result of the Navy's systematic discrimination, he was forced to leave active duty in September 1988, but has remained in the Navy Reserve. Since 1988, he has served numerous active duty tours; on some he has encountered the same covert Non-liturgical prejudice and bias to which the Navy has turned a blind eye.

He became aware of the evidence exposing the Navy's faith group quota system and systematic Non-liturgical prejudice only after talking with one of the other Plaintiffs in early 2000 and examining the results of the Stafford and Ellis Reports described *infra*.

42. DAN NICHOLS (*Gibson*) resides at 809 Malibu Drive, Columbia, South Carolina. He entered the Navy CHC in April 1982. At that time, he was endorsed by the United Methodist Church (UM), a Liturgical denomination. He was promoted to LCDR in 1986. Although he had been endorsed by the UM, CH Nichols came to believe he should baptize adults rather than infants, a practice which was not incompatible with his endorsing denomination at that time. However, consistent with his changed beliefs, he changed his endorsement from UM to Chaplaincy of Full Gospel Churches (CFGC), an endorsing agency for charismatic Non-liturgical churches and fellowships, just before the FY93 CDR promotion board.

When he was assigned to Whitby Island, Washington, 1991-94, after he changed his endorsement to CFGC, he was visited by RADM Muchow who upbraided CH Nichols because he did not believe in infant baptism. RADM Muchow told CH Nichols he was occupying a billet for baby baptizers, although officially there were no denominationally designated billets. In the immediate area of the base there was no shortage of churches who would baptize infants and CH Nichols arranged for several baptisms under provisions which allow for contract clergy to meet a

free exercise need when necessary. When RADM Muchow left, CH Dave Young, the Catholic command chaplain, said to CH Nichols, “You’ve blown it now.” When asked what he meant, CH Young said, “You’re on the wrong team,” referring to CH Nichols’ switch from a Liturgical to a Non-liturgical endorser.

After he was non-selected for CDR, a senior Methodist chaplain who had been indirectly asked by the UM endorser to contact CH Nichols, called. The UM senior chaplain said, “You understand what its all about, don’t you? It’s all about accessions. The more evangelicals [*i.e.*, Non-liturgicals] on active duty, the fewer Methodists get on active duty.” This reflects a statement his former UM endorser made concerning the Chief of Chaplain’s concern over the large number of Non-liturgical chaplains.

The Navy’s hostility toward Non-liturgical faith groups and particularly to charismatics deprived CH Nichols of a fair opportunity for promotion. After his FOS, CH Nichols saw the handwriting on the wall; since the Navy had made continuation on active duty unreasonable and created a hostile environment, he retired under TERA when offered the opportunity. CH Nichols heard of the chaplain litigation in 2002.

43. RENE PORTER-STEWART (*Gibson*) Until she was discharged March 1, 2006, for multiple FOS to LCDR, CH Porter-Stewart was an active duty Navy Chaplain assigned to the Naval Medical Center, San Diego, California. She currently lives at 1061 Agate Street, Unit B, San Diego, California, 92109, but is a legal resident of Florida.

CH Porter-Stewart entered active duty as a Navy chaplain in September 1988, endorsed by the International Church of the Foursquare Gospel, an evangelical, pentecostal, Non-liturgical faith group. CH Porter-Stewart’s career is filled with examples of the Navy’s overt and covert hostility to effective, Non-liturgical chaplains. During Operation Desert Shield and Desert Storm

(Persian Gulf War), she established an airport ministry for all Marines leaving or coming home at Cherry Point, NC. She also developed and hosted several episodes of a television program for the Cherry Point, NC military community addressing such topics as reunion (when a service person returns after a deployment and combat) and suicide prevention. Despite these highly effective programs, she experienced hostility from her command chaplains who recommended she be given low marks on her fitness report. Her commander disregarded her command chaplain's recommendations, writing higher and more accurate fitness reports on her.

She was reassigned by her command chaplain from her highly effective ministry in the Headquarters Squadron, placed in a closet for an office and given a job with no job description, no budget, and no religious program support personnel. Several months later, after she defined her duties and began building an effective ministry, as a LT she was placed in a CDR's position with no overlap or support where she was subjected to hostility, inappropriate language and harassment from the senior Second Marine Air Wing Chaplain.

In 1995-1997, she was assigned to Balboa Naval Hospital, aka the Naval Medical Center, San Diego, CA, and again faced great harassment and a hostile work environment. CH Porter-Stewart, another female (LT) chaplain, two male chaplains and the Command Chaplain's civilian secretary filed complaints against the senior Chaplain, CH CAPT Dave Young. The Board of Corrections removed CH Young's fitness reports on CH Porter-Stewart, but did not grant her a special board. The Navy then placed CH Young on CH Porter-Stewart's LCDR Chaplain Selection Board, which failed to select her. No active duty Non-liturgical chaplain who worked under CH Young has been promoted. CH Young rated his Catholic chaplains above Protestant chaplains, both Liturgical and Non-liturgical, not on the basis of performance but because they were Catholic.

44. JAMES V. PRINCE (*Gibson*) lives at 3710 Cain Ct., Wilmington, Delaware, 28409. He first entered active duty in the Navy as an enlisted man in November 1970. He left the Navy in 1974 to pursue a seminary degree. He was commissioned as an Ensign in the Theological Student Program in 1975 and returned to active duty as a chaplain 1980. He is endorsed by the Southern Baptist Convention, a Non-liturgical faith group. His superiors consistently rated CH Prince as outstanding, placing him in the top 1% and “early promote” rating categories. The Navy promoted him to CAPT in 1993 but then selected him for involuntary retirement in 1997 (FY98) with less than four years time in grade as a CAPT.

Before accepting an assignment to Washington, D.C., CH Prince asked the then Deputy Chief, RADM Black, if he should wait to move his family until after the SERB results were announced. RADM Black, who was the SERB president, assured him he had nothing to fear. CH Prince relocated his family, resulting in a large financial loss due to the expenses associated with sequential, necessary short term relocations once the SERB was announced.

Of the five chaplains selected by the FY98 SERB, four were Non-liturgicals. The fifth CAPT chaplain was Catholic CH John Madden, whose vendetta and prejudicial comments against CH (LCDR) Aufderheide had resulted in CH Aufderheide’s non-selection to CDR and precipitated the DODIG investigation into the FY97 and 98 Chaplain CDR promotion boards.

CH Prince was selected for retirement on the basis of his faith group and because his excellent record which made him a threat to the Liturgical domination of the CHC leadership. Many other chaplains with far inferior records were protected and allowed to remain on active duty, in violation of the Navy’s own precepts, the Constitution and RFRA.

45. DUANE PURSER (*CFGC*) was an active duty Navy chaplain at the rank of LCDR when

CFGC was filed. He currently resides at ²⁹. He was endorsed by CFGC, commissioned as a Navy chaplain in July 1985, and promoted to LCDR in July 1993. His career includes the types of tours that the CHC has stated are necessary to be competitive for promotion, *e.g.*, Marines, training base and ships. Moreover, his career includes several unique assignments that should have assisted or led to his selection for Commander, specifically a tour on an Anti Air War picket, one of the most forward deployed ships, during the Gulf War, and service in the Mogadishu, Somalia, humanitarian relief exercise, for which he received outstanding fitness reports.

The Navy selected him for post graduate school, which he completed successfully. The Secretary of the Navy has instructed promotion boards to consider civil schooling as a “plus” in selecting officers for promotion, especially given the considerable investment of Navy funds such schooling represents. Despite this instruction and his outstanding record, LCDR Purser was non-selected for promotion to the rank of Commander in FY 2000 and FY 2001.

The Navy’s chaplain promotion process dominated by liturgical chaplains identified each chaplain’s faith group to the promotion boards. This allowed individual board members to secretly exercise their religious bias, preventing LCDR Purser’s promotion to Commander. The FY 2001 chaplain Commander promotion board had no Non-liturgical chaplains as board members. His FOS is typical of the Navy’s prejudice against Non-liturgical chaplains in general and charismatic chaplains in particular. CH Purser was forced retire when he reached 20 years of service due to his FOS to Commander.

CH Purser’s injuries include being denied a fair opportunity to compete for a full career and promotions in the Navy, denial of promotion to Commander in the Navy and the opportunity to compete for other promotions. The CHC placed CH Purser under abusive and hostile chaplain

6 The Court joined LCDR Purser as a CFGC plaintiff on 12/19/00, Doc. No. 47.

supervisors who inflicted great stress and strain on CH Purser and his family.

46. RAFAEL J. QUILES (Adair) Rafael J. Quiles resides at 203 Orchard Grove Place, Oldsmar, FL 34677. CH Quiles had prior enlisted service in 1970-1972 and 1973-1977. He reentered the Navy as a chaplain in January 1984. He is endorsed by the Church of God, Cleveland, TN, a Pentecostal denomination, and reached the rank of LCDR. CH Quiles' career and his exemplary record should have qualified him for promotion to Commander. He was non-selected for promotion to Commander by the FY 1997 and 1998 chaplain promotion boards. The evidence from the Navy and DOD Inspector General investigations clearly shows that 1) faith group played a determining part in the selection of chaplains for promotion during those boards, and 2) chaplains with records inferior to CH Quiles were selected for promotion while he was not. The reason he was not promoted was because he was a Non-liturgical and a member of a disfavored faith group, whereas those with inferior records who were promoted were from favored liturgical faith groups. After his non-selection, CH Quiles was told to leave the Navy. His retirement in December 1998 following his second FOS was a constructive discharge. At first CH Quiles thought his non-selection was "the luck of the draw." Through one of the co-Plaintiffs, he learned of the Stafford Report described in ¶ 52 *infra*, and by comparing his record objectively with those who had been promoted, he discovered the cause of his injury and the injustice done to him.

47. JAVIER ROMAN (*Gibson*) lives at 701 Creek Water Terrace, Apt 209, Lake Merry, Florida, 32746. He entered the Navy as a chaplain June 6, 1966, as a LTJG endorsed by the Chaplaincy of Full Gospel Churches, a non-denominational charismatic endorsing agency. He was promoted to LT a year later. On March 3, 2005, he was separated for twice FOS to LCDR.

His initial assignment was to Twenty-nine Palms, where he served as a base and battalion chaplain. In 2002, CH Roman was assigned to the aircraft carrier KITTY HAWK, based in

Yakuska, Japan. He was involved in Operation Enduring Freedom with the carrier.

When the command chaplain learned CH Roman was endorsed by CFGC, he said to CH Roman, "Oh, you're one of those troublemakers," referring to the fact that CFGC had sued the Navy over religious discrimination.

While on the KITTY HAWK, CH Roman filed an official complaint because a Catholic priest allowed to remain on active duty despite numerous FOS was selected for promotion to LCDR.

CH Roman had to fill in as the command chaplain several times during his tenure on the KITTY HAWK. Despite his demonstrated ability to fulfill this role and his outstanding fitness reports from his previous assignments, he was not selected for promotion to LCDR. His CAPT said he did not understand why CH Roman was not promoted. CH Roman believes his FOS was due to his challenging the preference given to FOS Catholics in retentions and promotions, the animosity of the CHC leadership against his endorsing agency, CFGC, and the ability of one board member to ruin a chaplain's career with no accountability.

48. DANIEL ROYSDEN (*CFGC*) was an active duty Navy Chaplain. He entered the Navy Chaplain Corps' Theological Student Program in 1981, was commissioned as a Navy chaplain in the Naval Reserve endorsed by the United Methodist Church from 1984 to 1987, and entered active duty in October 1987. In June 1987, he changed his endorsement from United Methodist to CFGC. Just before leaving Japan for his first sea tour, the Pacific Fleet Chaplain visited his ship and informed its captain that CH Roysden belonged to an unknown faith group and the Fleet Chaplain expected that CH Roysden would have to be replaced in a few months. CH Roysden was told by other Navy chaplains that he had made a mistake changing his endorsement from Methodist to CFGC and that it would hurt his career if he did not get out of "that group." Later at

Pearl Harbor, commenting on those who attended a full gospel service on the base, his senior chaplain told him that, "People who believe like that have no place worshiping on base and chaplains from those groups shouldn't even be in the Navy." Senior liturgical chaplains have placed junior liturgical chaplains in jobs to which LCDR Roysden should have been assigned, have awarded higher ratings to less qualified liturgical chaplains and disregarded or frustrated the efforts of other commanders or responsible staff personnel to provide recognition for CH Roysden's outstanding service in very difficult situations to which he was assigned, such as the Korean Air passenger plane crash on Guam.

In investigating CH Roysden's allegation of retaliation by his senior Catholic chaplain at San Diego, the Navy failed to interview his corroborating eye witness, allegedly on orders from someone responsible for supervision of the investigation. The history of the Navy's and CHC's hostility and prejudice against CH Roysden is indicative of their religious and denominational bias against CFGC beliefs and charismatic worship practices. As a result of such prejudice, CH Roysden was twice FOS for Commander, requiring his statutory separation when he reached twenty years time in service. Living in San Diego, CA when the suit was filed, he now resides at 4503 Mount Bachelor Dr., Sparks, NV 89436-4699.

CH Roysden's injuries include being denied a fair opportunity to compete for a full career and promotions in the Navy, denial of promotion to Commander in the Navy and the opportunity to compete for other promotions. The CHC placed CH Roysden under abusive and hostile chaplain supervisors who inflicted great stress and strain on CH Roysden and his family.

49. THOMAS RUSH (*Adair*) lives at 302 Edgewood Drive, Ft. Meade, FL 33841. He entered the Navy as a Surface Weapons line officer in 1977. In 1982 he left to attend seminary. He was commissioned as a Reserve chaplain in 1986 and came on active duty as a Navy chaplain in

January 1990. Despite outstanding fitness reports, he was not selected for promotion because the Navy discriminated against his Non-liturgical status by turning his prior Navy excellent line service into a promotion liability. The Navy counted his prior line officer service to place him before the chaplain promotion board, then disregarded his fitness reports as a line officer, considering only the few that he had as an active duty chaplain. Because the other chaplains being considered had more reports as chaplains, he was non-competitive for promotion. When he asked why he was not selected for promotion to Lieutenant Commander (hereafter "LCDR") in 1993, the senior Navy Chaplain "detailer" told CH Rush that he did not have enough "sea time", an obvious fabrication considering CH Rush's extensive time at sea.

Knowing that subsequent selection for promotion was an impossibility for a Non-liturgical who had been previously non-selected, he applied for and was approved for the Voluntary Separation Incentive Program. Asked by the Navy to remain on active duty for a short period of time to meet the Navy's temporary need for chaplains, he agreed and remained in the Navy until August 31, 1994. Despite the Navy's promise that his extension would not result in his second consideration for active duty promotion (adversely affecting his chance for promotion in the Reserve), the Navy considered and non-selected him a second time in 1994.

Forced to leave active duty by the Navy's systematic denominational bias in promotions, he returned to the Navy Reserve. In the context of its inter-related promotion and separation systems, *i.e.*, up or out, the Navy's actions were in effect a constructive discharge based on religious prejudice. But for this hostility, CH Rush would have successfully continued his Navy career as evidenced by his outstanding record. In 1996 he applied for and was accepted by the U.S. Air Force Reserve. There he was promoted to Major, largely on the strength of his Navy fitness reports and subsequently to Lieutenant Colonel. He is endorsed by the Southern Baptist

Convention.

The treatment of CH Rush is an example of a systematic policy and pattern of special prejudice against Non-liturgical chaplains with prior military service. The motivation behind this prejudice is the Liturgical hierarchy's fear that a Non-liturgical chaplain's prior military service gives him a competitive edge over Liturgical chaplains. Prior service gives a chaplain a better understanding of how the Navy works and can provide instant rapport with sailors and marines, resulting in more effective ministry. This could result in better fitness reports. In an equitable promotion system, some of these prior service chaplains would rise to the top of the CHC, posing a threat to Liturgical domination and control.

50. LLOYD SCOTT (*Gibson*) lives at 14 Heath Spur, Ledyard, Connecticut. He entered the CHC with over 2½ years active and reserve prior service as a naval aviator. He was endorsed by Evangelical Free Church of America (EFCA), commissioned in the CHC in July 1976, came on active duty in March 1979 and was promoted to LCDR in 1982.

Despite his outstanding record, CH Scott FOS to CDR. Having served with several Liturgical chaplains who were later promoted, he could compare his performance and record with theirs and know his record was superior. His failure to select for Commandeer was the result of stacking promotion boards with Liturgical chaplains who tended to select those like themselves. This denied him the equal opportunity to compete for promotion based on record of performance. He was forced to prematurely retire from the U.S. Navy in 1994 while Liturgical chaplains with records inferior to his were promoted and allowed to continue.

During Desert Storm, he was assigned to the 1st Marine Expeditionary Force, filling two CDR positions at the same time. Shortly before he was due to leave the war zone, the liberal command chaplain, CAPT Hiers, overheard LCDR Scott talking to his wife on the phone and telling her

“my ministry here has been fantastic, but has been truncated by demonic forces personified by chaplains.” CAPT Hiers requested, and the Chief of Staff agreed, to order CH Scott evaluated for fitness for duty because of his comments regarding demonic forces, recognized by CH Scott’s faith tradition. Although the subsequent psychiatric evaluation rebutted the allegation of unfitness for duty for psychological problems, rumors were spread concerning CH Scott’s stability and performance in Saudi Arabia. These reports resulted in changes in his duty station which placed him in non-competitive billets.

CH Scott subsequently filed an Article 138 challenging the authority and propriety of ordering an EFCA ordained pastor to have a psychiatric evaluation; the phenomenon of demons is recognized by the EFCA. The Article 138, ignoring the Free Exercise and Establishment Clause issues, sustained CH Hiers’ authority. The incident arising from the telephone conversation is illustrative of other conflicts between CAPT Hiers and CH Scott stemming from differences in their theological perspectives and CAPT Hiers’ failure to recognize the legitimacy of theologies other than his own.

51. MARY HELEN SPALDING (*CFGC*) enlisted in the Navy in September 1983, attended and graduated from officer’s candidate school in 1986, and transferred into the Navy’s Chaplain Corps in August 1990. After service in the Gulf War, Marine Corps Recruit Depot at Parris Island and on the aircraft carrier USS Forrestal (where she was hand picked as the first woman chaplain to serve on an aircraft carrier), she was named Navy Chaplain of the Year in 1995 while at Naval Air Station Key West, FL. The Navy then assigned as her command chaplain supervisor a Protestant Liturgical chaplain who had previously demonstrated his inability to get along with female chaplains and other faith groups. Upon his arrival at Key West, he told CH Spalding he could not work with her because she was a woman.

Rather than deal with the Protestant Liturgical command chaplain who created the problem, the Navy then reassigned her in a prejudicial manner that ensured she would not be competitive for selection to Commander. Transferred to the 2d Marine Division, as a LCDR she was initially given a supervisory position normally assigned to a Commander until the new Division chaplain took over her responsibility. Faced with the prospect of being separated after FOS because of the damaging impact on her career due to her Key West and subsequent experience and assignments, she retired at 15 years under the Temporary Early Retirement Act (“TERA”) in October 1998. The Navy’s overt and official hostility to her as a CFGC chaplain resulted in her being uncompetitive for promotion, amounting to a constructive discharge. Had it not been for this prejudice, CH Spalding would have been promoted and finished her career as a Navy chaplain. She lived in Edinburg, TX, at the time the suit was filed, but now resides at 610 Walk the Plank, La Jolla, TX 78560.

CH Spalding’s injuries include being denied a fair opportunity to compete for a full career and promotions in the Navy, denial of promotion to Commander in the Navy and the opportunity to compete for other promotions. The CHC placed CH Spalding under abusive and hostile chaplain supervisors who inflicted great stress and strain on CH Spalding.

52. GARY STEWART (*Gibson*) currently resides at 220 Walking Trail Dr., Concord, Virginia. He was an active duty Navy chaplain endorsed by the Bible Churches Chaplaincy when this suit was filed. He was commissioned as a chaplain March 19, 1985, entered active duty in April 1988 and was promoted to LCDR in 1995. Because of his Non-liturgical faith group’s tradition and beliefs, CH Stewart has been the object of religious prejudice and bias throughout his career.

In 1996, CH Stewart shared confidential matters regarding the command to which he was assigned with CH (CAPT) Blancett. CH Blancett came to CH Stewart’s home in Oregon to

confront him, telling him the CHC motto, “Cooperation without Compromise” was unrealistic. In front of CH Stewart and his wife, CH Blancett told him to compromise or suffer the consequences, *i.e.*, if you don’t compromise by divulging protected communications, you’ll never make it in the organization. CH Blancett followed through with his threat, giving CH Stewart a poor fitness report.

While at Great Lakes Naval Training Center, LCDR Stewart was put in charge of the Forrestal Village chapel which grew from 60 congregants to approximately 180. He learned from his sexton that CH (CAPT) Cooper, the Protestant Liturgical command chaplain, thought CH Stewart was “not liturgical enough,” despite the fact that CH Stewart is a Non-liturgical chaplain. 10 U.S.C. § 6031 authorizes any chaplain to conduct worship according to the forms and ordinances of his faith group, and he was meeting the free exercise needs of Forrestal Village personnel, as shown by the increase in the congregation.

Despite the availability of a Non-liturgical chaplain to replace him when he left Great Lakes, CH Cooper put a Protestant Liturgical in charge of the Forrestal Village chapel, resulting in the congregation once again shrinking because their Non-liturgical worship needs were not being met.

At Great Lakes, CH Stewart was also reprimanded for praying “in Jesus’ name.” When he then concluded a prayer with “I pray in the name of my Lord and my Savior,” as was his right under the Constitution and the Navy’s own regulations, he was relieved from his duties. After he reported this to his endorser, the command lawyer concluded CH Stewart had disobeyed the order not to close his prayers with a reference to Jesus Christ, whom CH Stewart and his faith group believe is the Son of God, Savior of the World, and the only scriptural authority to ask God for blessing and protection.

The reason for actions taken against CH Stewart is the Navy's culture of religious prejudice against Non-liturgical chaplains and faith groups which has resulted in LCDR Stewart's non-selection for promotion.

Congressmen Walter Jones (NC) invited CH Stewart to a meeting chaired by Senator Lindsey Graham (SC) on 6/6/06 to address issues arising from the House of Representative's language in the Defense Appropriations Bill allowing chaplains to pray according to their conscience. The meeting included members of the Armed Services, DOD and former Navy Chief, RADM Black. RADM Black said he was not aware of any chaplain being threatened or punished for praying a sectarian prayer when he was Chief. CH Stewart reminded RADM Black that (i) his endorser had written RADM Black complaining that CH Stewart had been criticized for praying according to his denominational beliefs and his career threatened by CH Burt, the current Chief, but then one of CH Stewart's command chaplains at Great Lakes; and (ii) RADM Black had replied to the endorser's letter. RADM Burt was at the 6/6/06 meeting. The Navy investigated CH Stewart and reassigned him on short notice in retaliation for his participation in Sen. Graham's meeting, causing CH Stewart and his family financial loss and great stress.

The Navy said CH Stewart was moved to Bethesda Naval Medical Center for "mentoring" which never occurred. His Bethesda command chaplain was reassigned because of inefficiency shortly after CH Stewart arrived and he became the deputy command chaplain prior to his statutory retirement in 2007. The CHC sought other opportunities to retaliate against CH Stewart, such as falsely accusing him of participating in a radio interview while on duty, a fact which could have easily been checked and found to be false. The Navy's acts of retaliation and prejudice placed great stress on CH Stewart and his family.

53. LYLE SWANSON (*Adair*) resides at 7052 Bennington Drive, Gurnee, Illinois 60031. CH

Swanson was commissioned as a Navy Chaplain in June 1982. He is endorsed by the Christian Churches and Churches of Christ, a Non-liturgical faith group. Despite outstanding fitness reports, including two years (1992-93) as the command chaplain in Bahrain during the Gulf War and the subsequent period of semi-hostility, and selection for post-graduate school, he was non-selected for Commander in 1994 and 1995. He was offered and accepted the opportunity to qualify for TERA. With no other viable options, he retired under TERA in August 1997; the Navy's actions and prejudice constitute a constructive discharge.

The basis for his non-selection to Commander, forcing his subsequent early retirement, was the fact that he was a Non-liturgical chaplain. In early 2000 while talking with an active duty chaplain friend, CH Swanson became aware of the evidence revealed in the Stafford Report, ¶ 52 *infra*, the Navy's faith group quota system, the consistent promotion of chaplains with records inferior to his, the use of religious criteria in Navy chaplain promotions, and other information concerning the allegations of this lawsuit.

54. FRED A. THOMPSON JR. (*Gibson*) resides at 2853 South Nephrite Way, Meridian, Idaho. He began his naval service in 1978 when he enlisted in the Naval Reserve while he was in seminary. Upon graduation from seminary, he was endorsed by the Assemblies of God, a Pentecostal Non-liturgical denomination, and commissioned in the CHC in September 1980. He was promoted to LCDR in August 1986 and in 1987, was assigned as the senior chaplain on the battleship USS IOWA, normally a CDR's billet. Prior to that assignment, he had outstanding fitness reports and tours of duty; it is unlikely he would have been selected as the senior chaplain of the USS IOWA without an outstanding record.

Shortly after his assignment to the USS IOWA, a Catholic priest, LCDR James Danner, who was junior to LCDR Thompson, was also assigned to the IOWA. The ship's CAPT and the XO

were both Catholics; their friendship with LCDR Danner caused tension within the ship when LCDR Danner refused to cooperate with LCDR Thompson, who was the command chaplain. CH Thompson was subjected to a series of humiliating and embarrassing situations in which the ship's senior leadership demeaned him. Because CH Thompson discussed some problems on the battleship with his senior chaplains in an attempt to obtain advice as how to best handle the situation with CH Danner and the Catholic command, he was later reprimanded by his commanding officer, who subsequently made both CHs Danner and Thompson co-equal command chaplains, a very unusual situation and contrary to Navy regulations and protocol.

An explosion in Turret 2 of the IOWA killed 46 sailors, an event which made national news. When the ship reached Norfolk, CH Danner left the ship, leaving CH Thompson to address the issues that arose from the mass casualties and ministry to dependents of sailors killed in the explosion. Later, CH Danner was reassigned early at the request of the command due to his unwillingness to follow directions from the ship's leadership.

After the results of the official investigation of the explosion in Turret 2 were challenged by several dead sailors' dependents, CH Danner wrote a very insulting and critical letter to survivors and family members who questioned the investigation's results, which were later found to be flawed. The resulting outcry embarrassed the Navy. According to the Washington Times, CH Danner received a letter of reprimand from the Chief of Naval Personnel. While this would normally kill a naval officer's career, CH Danner was promoted to CDR and subsequently to CAPT. In contrast, CH Thompson was FOS to CDR and forced to leave the service in January 1993. He was subsequently promoted to CDR in the Reserves in 1995 and retired from the Reserves.

The fact that CH Danner, despite reportedly receiving an official letter of reprimand, was

promoted while CH Thompson was discharged strongly suggests favoritism for Catholics and the prejudice against Non-liturgicals. CH Thompson learned of the chaplain lawsuits in 2002.

55. GLENN THYRION (*Gibson*) lives at 102 Burke, Crane, Texas 79731. He entered active duty in October 1990, endorsed by the Church of the Nazarene, an evangelical Non-liturgical faith group. His first assignment after the Chaplain School Basic Course was to the USS HALEAKALA, a ship with a history of serious morale, moral and leadership challenges. Before leaving the Chaplain School, its director, CH Fitzgerald, told CH Thyrion if he had not shown he was a quality chaplain, he would not have been assigned to the ship because of its history of serious problems. On the HALEAKALA, CH Thyrion was initially put in charge of the evangelical worship service. When a new command chaplain was assigned, he removed CH Thyrion from the evangelical, Non-liturgical service, giving that responsibility to a Protestant Liturgical chaplain, and gave CH Thyrion the responsibility to run a liturgical General Protestant service. The new liturgical “pastor” of the evangelical service succeeded in driving the congregation away from the service by espousing liberal, non-biblical theological positions to the conservative and Bible centered congregation who voted with their feet.

After his reassignment to the Liturgical service, the command chaplain criticized CH Thyrion’s preaching and gave him orders as to how he should preach. When CH Thyrion challenged the legality of such order as contrary to 10 U.S. C. § 6031, the command chaplain told him he would approve his sermons on a case-by-case basis. This is contrary to statute and the Constitution. *See Rigdon v. Perry*, 962 F. Supp. 150, 162 (D.D.C. 1997) (government officials may not dictate or interfere with a chaplain’s sermons).

The Navy selected CH Thyrion for the clinical pastoral education program, a specialized postgraduate course in hospital related skills and competencies. Following completion of the

course, the CHC assigned CH Thyrior to Bethesda Naval Hospital where his supervisor/command chaplain was CH Joan Vieira, a female, Liturgical Protestant. She did not like Non-liturgical male chaplains and fought every attempt by CH Thyrior to minister to the sailors, marines and families assigned to the Hospital. Liturgical CH Vieira criticized CH Thyrior because he was “too Christological,” *i.e.*, too centered on Christ, and preached too long. She undercut his stature and status within the chapel community through such things as telling jokes to the congregation about an “incompetent male preacher” just before he was to preach. As justification for giving him low fitness reports, CH Vieira told CH Thyrior “you’re talented and could make much more money as a civilian.”

The Navy’s systematic religious hostility resulted in his FOS to LCDR in 1999 and 2000 despite his excellent record prior to CH Vieira and his selection to postgraduate school. CH Vieira’s overt hostility to CH Thyrior is typical of the culture of prejudice the Navy and its CHC leadership has cultivated and encouraged against evangelical Non-liturgical chaplains in violation of the Constitution and RFRA.

54. ARMANDO TORRALVA (*Gibson*) was an active duty Navy chaplain at the grade of LCDR assigned to Corpus Christi, Texas when this case was filed; he resides at 6637 LaBianca Dr., Corpus Christi, Texas. CH Torralva began his military career as a Chaplain Candidate endorsed by the Associated Gospel Churches, and was commissioned a 2LT in the USAF Reserve in August 1981. He was commissioned in the Air Force Chaplain Service, remained in the Air Force Reserve from 1984 to 1988, and was promoted to CAPT (O-3). He then entered the Navy as a chaplain in July 1988.

Among his various assignments, during the presidency of George Bush, Sr. CH Torralva was chaplain for the Marine 1 Squadron which flies the presidential helicopters. In 1997 CH Torralva

was selected for postgraduate school and attended Princeton Theological Seminary. Although the normal chaplain postgraduate education program does not have sufficient hours to qualify for a degree, CH Torralva took extra hours and earned a Master of Theology. Despite the fact the Secretary's instructions require boards to look at postgraduate experience in a positive light, and the fact he was selected for postgraduate school based on the strength of his record, CH Torralva was not selected by the FY99 CDR Board. He was scheduled to fill a CDR's billet at COMFAIRMED Headquarters in Naples, Italy. Although he reminded the detailee that he had been FOS, the detailee reviewed his records and indicated to CH Torralva he had a competitive record and would probably be picked up by the next board.

Reporting to COMFAIRMED in August 1999, CH Torralva discovered his billet was unfunded, meaning that there was no funding supporting it and the billet had been withdrawn from the Headquarters. Nonetheless, he was assigned as a force chaplain, which would normally have meant exercising supervisory responsibilities over subordinate chaplains as a member of the Admiral's staff. CH Torralva, in his role as force chaplain, did an inspection of a chapel program at Rota, Spain. The command chaplain was Catholic CAPT McLaughlin. CH Torralva found minor improprieties and problems, including numerous complaints against the junior Roman Catholic chaplain from his parishioners and staff who complained he was not doing his job. CH Torralva also found minor discrepancies in the Religious Offering Fund. The command was embarrassed, particularly since their difficulties were pointed out by a Protestant Hispanic.

CH Torralva's senior chaplain, CH (CAPT) Gentolli at CINCUSNAVEUR, the command chaplain of Naval Forces in Europe, directed CH Torralva to evaluate the problems at the Naval Support Activity at Naples. CH Torralva found the Religious Ministries Department under the Roman Catholic CH Ronald Buchmiller was divided, demoralized and dysfunctional due to CH

Buchmiller's lack of leadership and hostility toward Protestant evangelicals. CH Torralva recommended in a white paper to CH Gentolli that they initiate team building exercises to help remedy the problem. He was criticized for his inspection and recommendation by both CH Buchmiller and the NSA Commander, CAPT Gray, who blamed the problems on a previous chaplain, Phil Veitch, who allegedly stirred up division and dissension. However, CH Veitch had been gone for some time and an objective evaluation showed the real problem was CH Buchmiller's anti-evangelical attitudes and prejudice. The Navy then transferred CH Torralva from COMFAIRMED to NSA Naples, working under CH Buchmiller, the same command chaplain he had just criticized.

While at COMFAIRMED, CH Torralva assumed the pastorship of a evangelical congregation of American military personnel assigned to NATO Headquarters at Armed Forces South (AFSOUTH). When he was reassigned to NSA Naples, CH Torralva retained his position as the chaplain/pastor for that congregation. When the new command chaplain, CH (CAPT) Steve Rock, another Catholic, reported in, his first words to CH Torralva were he wanted the AFSOUTH congregation disbanded. CH Torralva communicated that to AFSOUTH personnel who pointed out under Title 10 and the Memorandum of Support among the Armed Forces the Navy had to provide support for the religious needs of AFSOUTH and therefore CH Rock could not shut down the evangelical congregation. This became a continuing bone of contention between Catholic CH Rock, who wanted to eliminate the evangelical congregation, and CH Torralva, their pastor. CH Torralva was supposed to be the deputy command chaplain because of his seniority as a LCDR, but CH Rock refused to allow CH Torralva to function as such. CH Rock made, and permitted others to make, openly disparaging anti-Hispanic comments about CH Torralva.

When the base commander, CAPT Gray, planned to initiate a “teen clinic” which would dispense birth control and provide sexual disease treatment to teenagers without parental consent, CAPT Gray directed the chaplains to help sell the program to the community. CH Torralva preached a sermon on parental responsibility, including their obligation to instruct their children in sexual matters, and mentioned the opening of the Teen Clinic without either criticizing or preaching against it. It caused a firestorm in his congregation, which included high ranking Army and Navy officers, and embarrassed CAPT Gray. He accused CH Torralva of violating an order not to discuss the Teen Clinic until such time as the command was ready to announce it to the community. CAPT Gray and CH Rock retaliated against CH Torralva on his fitness reports. A subsequent Article 138 investigation initiated by CH Torralva exonerated CAPT Gray. However, the investigation highlighted the dysfunctional and divisive Chaplain Department under CH Rock. Nonetheless, nothing was done.

Although the Navy pays lip service to Equal Opportunity, the promotion rate of Hispanic Protestants is clearly below that of Hispanic Catholics. It is believed this is due to a perception among many Catholic board members that Hispanic personnel should be Catholic, not Protestant or evangelical, a perception flowing from comments made to several Hispanic non-Catholic chaplains, including CH Torralva. The fact that CH Torralva could be selected to be the chaplain for Marine 1 Squadron, postgraduate school, as well as sent to occupy a CDR’s billet while still a LCDR is clearly inconsistent with his FOS. The only explanation is something other than his record was before the board. The Navy system of secret votes and small numbers of board members gives unbridled discretion to denominational representatives who have historic animosities with other denominations.

57. THOMAS DANIEL TOSTENSON (*Gibson*) resides at 1822 West Brookwood Court,

Phoenix, Arizona. He was commissioned a Navy chaplain in 1988; he is endorsed by the Evangelical Free Church, a Non-liturgical denomination. He served in Desert Storm with the 8th Tank Battalion of the 2nd Marine Division, the highest decorated Marine Unit in that war. He was only the second chaplain LT in the history of the CHC to graduate from the Naval War College.

He was subsequently assigned to Patuxtant Naval Air Station. The command chaplain at that time was CDR Carl Drake, a Roman Catholic who had adopted a teenager as his son. As a result of a child molestation charge filed by his adopted son, CDR Drake was forbidden to have contact with the boy. CH Tostenson saw CDR Drake with the boy and reported it to the social worker. CDR Drake was subsequently court-martialed for violating the court order. Although sentenced to 4 years in prison, CDR Drake only served 9 months and was allowed to retire with full retirement pay. CH Tostenson subsequently FOS to CDR despite an outstanding record. Rev. Tostenson believes his FOS was retaliation by the Catholic chaplain network through the Catholic board member for reporting CDR Drake.

58. JAMES TWAMLEY (*Gibson*) resides at 6423 Verde Vista Court, Klamath Falls, Oregon. He began his military career in the U.S. Army as an enlisted man, on active duty from January 73 to June 1976. Attending college after his service, he remained in the Army Reserve for several years, joined the Air Force ROTC, was commissioned as a Navigator in 1981 and rose to the rank of CAPT (O-3) before he left the Air Force in August 1987 to become a Navy chaplain. Having completed his necessary religious education and pastoral experience while in the Air Force, he was endorsed by the Assemblies of God, a Pentecostal, Non-liturgical denomination, and was commissioned a Navy chaplain at the rank of LT in September 1987.

His prior military experience as an Army enlisted man and Air Force Officer provided CH Twamley an excellent backdrop for his military ministry and accordingly he received stellar

fitness reports. He was promoted to LCDR in October 1992. In his spare time, he also managed to obtain a law degree.

CH Twamley's last assignment before he was forced to retire for FOS was a chaplain recruiter in Arizona in 1998-99. He remembers Mrs. Berto in the Chief of Chaplains Office gave him his recruiting goals. He was told to emphasize the recruiting of Catholics, then Liturgicals and discouraged from recruiting Non-liturgicals. Once he reached his Non-liturgical goal he had to sit on the paperwork of other interested Non-liturgical candidates. CH Twamley achieved his recruiting goals, while others did not.

Despite his stellar record, he was not selected for promotion by the FY99 and 00 CDR boards and forced to retire on January 1, 2000 with 22½ years time in service. At least one of the board members had a reputation of hostility toward pentecostal chaplains; only one of five pentecostal chaplain candidates was selected in FY99 and he was a minority. CH Twamley had only one B in his fitreps as a LTJG whereas the investigation into the FY 97 and 98 CDR boards showed Catholics and Liturgical selectees with many Bs and Cs. The CHC's system of secret voting with no accountability subjected CH Twamley to denominational bias, denying him the opportunity to be fairly considered for promotion on his record.

59. THOMAS R. WATSON (*Gibson*) resides at 2804 Spoons Chapel Road, Ashboro, North Carolina. He began his military career in 1974 on graduation from the United States Naval Academy. Commissioned as a Second Lieutenant in the USMC, he was promoted to the grade of CAPT (O-3), left active duty and transferred to the Reserves while he attended Southeastern Seminary. He enrolled in the Theological Student Program where he gave up his Marine Corps commission and rank and was re-commissioned as an Ensign (O-1) in the Naval Reserve. He entered active duty in 1984, endorsed by the Southern Baptist Convention. After tours of duty in

Okinawa with the Coast Guard and on the USS YELLOWSTONE, he was FOS to LCDR. During his service as a chaplain, he twice replaced Liturgical chaplains whom he was told had left their commands with bad fitness reports, while he received excellent fitness reports. Those chaplains were subsequently promoted while he was not.

During his time on the USS YELLOWSTONE, a Catholic chaplain on the 6th Fleet staff became angry with LT Watson because an invitation to visit the ship was given to a high ranking Catholic Cardinal in Rome when the ship visited Naples, Italy by an RP who knew the Cardinal. The 6th Fleet Catholic chaplain thought he should have issued the invitation. Given LT Watson's prior military service and his excellent record, he believes his FOS to LCDR was due to (a) being blackballed by the Catholic chaplain network (Catholic chaplains met regularly and networked among themselves and were given a reserved seat on every chaplain promotion board from 1977 through 2002); and (b) the CHC's hostility to Non-liturgical prior service chaplains.

Prior to his discharge for FOS, LT Watson was being treated for a medical condition requiring surgery. He was supposed to receive a Physical Evaluation Board (PEB) after surgery to determine his medical fitness for continued service, which can result in a pension if found medically unfit for active duty as a result of a service connected medical condition. He was improperly discharged in 1993 before the PEB was complete. After Congressional intervention, he was reinstated to active duty in 1995 to complete the PEB process. His reinstatement allowed him to gain the necessary time in service (prior service plus active duty as a chaplain) to qualify for TERA and he retired in 1995 with a 30% disability. Prior to hearing about the litigation in 2002, CH Watson had no knowledge of the evidence showing religious bias and had no indication as to why he was FOS to LCDR.

60. JAMES M. WEIBLING (*Adair*) resides at 12425 Sunbrook, Brookside, TX 77581. He

entered Navy Officer Candidate School in March of 1980, graduated in July 1980 and was commissioned as an Ensign line officer. In 1985 he left active duty to attend seminary and remained a drilling reservist. In August 1988, he resigned as a Navy line officer in exchange for a commission as a chaplain and began his active duty in September 1989. Despite his outstanding career as a line officer, the Navy CHC considered such service a liability; because of its religious animosity against Non-liturgical chaplains, particularly those who had prior line service, twice failed to select CH Weibling for LCDR. He was released from active duty in February 1994.

CH Weibling's attempts to understand why he was not selected for promotion were met with lies, misrepresentation and obfuscation on the part of senior Navy chaplains, *e.g.*, all chaplains have outstanding fitness reports, need more sea time. The Chief of Chaplains denied the possibility of faith group bias or improper board member influence when CH Weibling raised these issues with him. CH Weibling's every effort to verify whether such prejudice and impropriety existed was met with denial and deceit by senior Chaplains. He became aware of evidence of this prejudice only in late 1999 when recalled to active duty for a short time in Naples, Italy, where he learned of the Stafford Report and its implications. A lawyer specializing in military claims that he consulted in early 2000 after his return from active duty told him he had to have "hard" evidence before filing suit. CH Weibling's efforts to obtain that evidence in a timely manner were met with more Navy obfuscation and delay.

But for the Navy's religious prejudice and denominational quotas challenged here that led to his separation, CH Weibling would have been promoted and continued his active duty career. The Navy's deliberate deceit and fraudulent concealment precluded his ability to bring his claim sooner.³⁰ CH Weibling was retired in the Naval Reserve as a LCDR after reaching statutory

³⁰ "Read into every federal statute of limitations *** is the equitable doctrine that in the case of defendant's fraud or deliberate concealment of material facts relating to his wrongdoing, time does not

limits.

61. DAVID S. WILDER (*Adair*) resides at 141 Azalia Plantation Blvd., Maysville, NC 28555. He is endorsed by the Southern Baptist Convention. He entered active duty in September 1985. Despite an outstanding record, he was non-selected for Commander in 1999 and 2000 due to the Navy's systematic discrimination against Non-liturgical s.

CH Wilder experienced blatant and obvious examples of faith group prejudice on many occasions. In violation of 10 U.S.C. § 6031 (a chaplain may conduct public worship according to manner and forms of the church of which he is a member), his Liturgical superior told CH Wilder to conduct an Episcopal service, completely foreign to his religious tradition and individual faith.

From July 1990 to July of 1993, CH Wilder was assigned to Marine Corps Base, Camp S.D. Butler, Okinawa. He was leading the General Protestant service and CH Larry Farrell, a co-plaintiff, lead an alternative Pentecostal service in the same chapel at a later time. CH Wilder's General Protestant service averaged approximately 100 to 125 and CH Farrell's service averaged 250-275 per week. In June 1992, Episcopal CH Williams, the incoming Marine Expeditionary Force chaplain, visited CH Wilder's service and made "suggestions" how CH Wilder could "improve" his service. These amounted to making the General Protestant service into an Episcopal service. When CH Wilder refused, he was removed from being pastor of his chapel service, although he was still the Camp Chaplain. CH Williams took over CH Wilder's General Protestant service, converting it into an Episcopal mass; attendance decreased to about 12 people per week.

CH Wilder started holding a Baptist service in the base theater. When his service became ten times as large as CH Williams's, CH Williams tried to close CH Wilder's service, accusing him

begin to run until plaintiff discovers or by reasonable diligence could have discovered, the basis of the lawsuit." *Fitzgerald v. Seamans*, 553 F.2d 220, 228 (D.C. Cir. 1977).

of sabotage.

CH Wilder became aware of the evidence of the Navy's systematic and pervasive Non-liturgical prejudice in 2000 after this lawsuit was filed by talking with other Plaintiffs and seeing evidence of the Navy's systematic faith group bias. He was forced to retire due to statutory limits on FOS LCDRs.

62. BARBY EARL WILSON (*CFGC*) entered the CHC in 1977, under an initial endorsement of the Church of God in Christ, a Non-liturgical Christian denomination. He served tours of duty at Governors Island, NY; Norfolk, VA; Little Creek Amphibious Base, VA; Okinawa; Fleet Religious Support Activity; duty as ship's chaplain; and Director of Pastoral Care Services in Saudi Arabia during the Gulf War. In 1983, he filed a religious discrimination charge against a liturgical chaplain. His superior chaplains told him that if he expected to make the Navy a career he should drop his charge (or change it from a religious to a racial discrimination charge); on principle CH Wilson refused to do so. In 1986, he changed his endorsement to *CFGC*. Although promoted to LCDR, he was not selected for CDR and retired in 1994 with 17½ years of service having seen that religious and racial discrimination would not let him be promoted. He now lives at

CH Wilson's injuries include being denied a fair opportunity to compete for Commander and a full career and further promotions in the Navy, denial of promotion to Commander in the Navy and the opportunity to compete for other promotions. The CHC placed CH Wilson under abusive and hostile chaplain supervisors who inflicted great stress and strain on CH Wilson and his family.

63. WILSON W. WINEMAN II (*Gibson*) resides at 918 Heather Woods Dr., Nampa, ID. He was commissioned and entered active duty July 6, 1992, endorsed by the Church of the Nazarene,

an evangelical, Non-liturgical faith group. Upon reporting to his initial assignment, his commander asked him if he was going to convert the heathens in the unit to Catholicism, the commander's denomination. CH Wineman responded it was unlikely since he was a Protestant, but he would be willing to share them 50 - 50 with the commander. His commander then replied in a serious manner, "Another God Damned Protestant. Don't they know there isn't a Protestant worth his pay?" This is typical of the sort of religious bias CH Wineman had to contend with. Whereas the normal assignment to a ship is about two years, CH Wineman was assigned to the USS BOXER (a combination amphibious assault ship and helicopter carrier) for four years, including a tour during which the senior chaplain manifested overt suicidal tendencies and disrupted the chapel program. Although a junior chaplain, CH Wineman was called on to address both the suicidal chaplain problem as well as keep the ship's religious programs functioning.

Six months prior to leaving the ship, he was told by the new command chaplain to phase down and close out his chapel programs, which he did. The ship commander then graded CH Wineman down on his fitness report because his programs were being closed down whereas other programs by the other chaplains continued. In other words, he was penalized for following the guidance of his command (and supervising) chaplain who failed to explain to the commander that CH Wineman was following orders and proper procedure.

CH Wineman was also criticized for not drinking alcohol at official Navy functions and social events even though it is against the ordinances of his faith, and was told by one senior Liturgical chaplain he was "too religious." The Navy's bias against Non-liturgical CH Wineman resulted in the Navy's failure to select CH Wineman twice for promotion to LCDR prior to his medical retirement. CH Wineman was assigned to Camp Pendelton, CA, when he was medically retired.

64. MICHAEL A. WRIGHT (*Adair*) resides at 2026 Lynn Place, Longview, WA 98632. He was an active duty Navy Non-liturgical chaplain and an original plaintiff under the pseudonym John Adams when the case was filed. CH Wright, eligible for selection to the grade of Commander when this action was filed, and having heard that senior Navy officials had expressed their displeasure with chaplains who dared to challenge the illegal policies cited herein, feared prejudice and retaliation during the Commander Selection Board if his real name had been revealed before the board adjourned. That Commander board non-selected him because of the Navy's Non-liturgical prejudice as evidenced by the fact that there were no Non-liturgical chaplain board members and the disproportionate number of liturgical chaplains selected. He has witnessed and been a recipient of instances of discriminatory treatment against Non-liturgical chaplains and preference for liturgical chaplains.

CH Wright was selected to assist in the detailer's office because of his reputation for excellent administrative skills. When the detailer's office was being moved to Millington, TN, he was ordered to Millington, although his position as the administrative officer had been eliminated. The senior detailer, with the approval of the CHC, nonetheless promised to make it work for CH Wright by splitting his time between Millington and Washington, D.C. Upon his reassignment to Millington, CH Wright was informed the promised arrangement was not authorized and he was assigned to the chapel in an excess position. The Millington Base Commander rated CH Wright above the Catholic chaplain who was badly overweight and acknowledged he did not do well on his fitness report. The Catholic was promoted and CH Wright FOS.

CH Wright has been subjected to disparate treatment and suffered injury from the Navy's faith group prejudice and bias as evidenced by his non-selection to CDR, despite his outstanding record. CH Wright was forced to retire at the rank of LCDR due to statutory restrictions.

65. CHRIS XENAKIS (*Gibson*) currently resides at 29 North Main St., Cortland, New York. He was commissioned as a Navy chaplain in March 1983, endorsed by the Conservative Baptists. His first assignment was to the Naval Hospital in Oakland, California. On his arrival, two Roman Catholic priests asked him to join in an attempt to get the senior chaplain, a Methodist, relieved for cause, allegedly alcoholism and womanizing. Having just arrived, he refused to take sides. The ensuing investigation went nowhere. A year later, when CH Xenakis was leaving the command, a priest who was later promoted to CAPT told CH Xenakis he was very unhappy with his failure to be a “team player”, *i.e.*, to side with him in his dispute with the senior chaplain, and that he would remember CH Xenakis.

CH Xenakis’ second tour was aboard the USS SARATOGA, replacing an Assembly of God chaplain, a Non-liturgical. The command chaplain, a Presbyterian, and the assistant command chaplain, a Roman Catholic, had not gotten along with the Assembly of God predecessor and transferred their anti-evangelical animus to CH Xenakis. A few months after his arrival, the Presbyterian command chaplain transferred and was replaced by a Non-liturgical chaplain. The hostility toward CH Xenakis stopped and the Catholic chaplain’s attitude softened, a testament to the dramatic positive effect the command chaplain’s theological perspective can have on the personnel under his supervision and in the command.

In 1984-85, CH Xenakis completed certificate programs in crisis counseling and substance abuse counseling and had three articles published in U.S. Naval Institute Proceedings, two of which won awards. In 1990 he was assigned, based on his expertise, to Washington as a “special assistant” for family ministry, where he developed, coordinated and helped lead professional development and training events related to family issues for chaplains and civilian social workers. During the 1991 Gulf War, he wrote a “Return and Reunion” manual that Navy Family Services

Centers used to help returning sailors and marines readjust to family life.

His Washington assignment brought him into the middle of senior officer conflicts, not unlike his experience at Oakland. Although he was not assigned to the Chief of Chaplains Office, his office was down the hall from the Chief's office and the Chief and his assistants routinely gave him taskings and guidance at sharp variance with what his own command expected and wanted him to do. His own office was plagued by overt hostility between the Roman Catholic chaplain members and the social workers who were also in the office.

CH Xenakis believes the Chief of Chaplains made improper and illegal communications with the members of the FY96 and 97 selection boards concerning his performance and reputation in the CHC, including recommendations he not be selected for promotion. Roman Catholic and Liturgical chaplains whose records were inferior to that of CH Xenakis' were selected for promotion by the FY96 and 97 CDR Selection Boards. The FY97 CDR Chaplain Board was one of those investigated by the NIG and the DODIG. Their evidence suggested and the DODIG concluded promotions may have been based on denominational preferences. The report of the investigation by the Minority Affairs Officer, CAPT Stafford, attached as an exhibit herein, clearly shows those selected by the FY97 and 98 boards had records inferior to many of those who were not selected, including CH Xenakis.

CH Xenakis served as a projectionist and recorder on CHC selection boards other than those that considered him. Without commenting on specific board proceedings, he was dumbfounded by the arbitrary comments board members, including board presidents, were allowed to make and how even an innocuous and subtle comment about "Corps reputation" could sway the entire board's decision for or against a given candidate. "Corps reputation" is not in the records, the only basis on which promotion decisions are supposed to be made.

ADDENDUM B– PLAINTIFF LIST BY CASE

Chaplaincy of Full Gospel Churches v. [the named Secretary of the Navy], 99cv1945;

CHAPLAINCY OF FULL GOSPEL CHURCHES

CARSON, Martha

PURSER, Duane

JOHNSTON, Mark R.

ROYSDEN, Daniel E.,

KITCHEN, Klon

SPALDING, Mary Helen

MERRITT, Denise Y.

WILSON, Barby

Adair v. [the named Secretary of Navy], 00cv566;

ADAIR, Robert H.

LAVELLE, Michael

BELT, Michael

.LINZEY, George W.

BLAIR, William C.

NALL, Timothy D.

DEMARCO, Greg

QUILES, Rafael J.

WILDER, David S.

RUSH, Thomas (Adair

FARRELL, Larry

SWANSON, Lyle

HAMME, Richard F.

WEIBLING, James M.

HARKNESS, Furniss

WRIGHT, Michael A

Gibson v. U.S. Navy, 06cv1696

ASSOCIATED GOSPEL CHURCHES

BYRUM, George Philip

ARNOLD, Rich L.

CALHOUN, Andrew

BAILEY, Ray Allen

DEMY, Tim

BRADLEY, Rick P.

DONEY, Patrick T.

DUFOUR, Joseph

MARSH, Walker, Jr.

ELLISON, Floyd C.

MITCHELL, David

GARNER, Alan

MORENO, Jairo

GIBSON, Dave

NICHOLS, Dan

GORDY, John

PORTER-STEWART, Rene`

HATCH, William

PRINCE, James V.

HEINKE, Gary

ROMAN, Javier

HENDRICKS, Robert L.

SCOTT, Lloyd

JOHNSON, Frank

STEWART, Gary

JONES, Laurence W.

THOMPSON, Fred A., Jr.

KIRK, Samuel D.

THYRION, Glen

KLAPACH, Frank S.

TORRALVA, Armando

KLAPPERT, Tom

TOSTENSON, Thomas Daniel

KOHLMANN, Jan C.

TWAMLEY, James

LANCASTER, Allen L.

WATSON, Thomas R.

LOOBY, James

WINEMAN, Wilson W.,II

MAK, Manuel

XENAKIS, Chris