

2000 WL 35633644 (D.D.C.) (Trial Pleading)
United States District Court, District of Columbia.

CHAPLAINCY OF FULL GOSPEL CHURCHES, Plaintiff,

v.

THE HONORABLE RICHARD J. DANZIG, Secretary of the U.S. Navy; Vice Admiral Daniel T. Oliver, Chief of
Naval Personnel, and the United States Navy, Defendants.

No. 1:99CV02945.

January 5, 2000.

**First Amended Complaint for Declaratory Judgment, Injunction and Equitable Relief to Address Defendants'
Unconstitutional Religious Discrimination, and Violations of First and Fifth Amendment Rights**

Respectfully submitted, Arthur A. Schulcz, Sr., D.C. Bar No. 453502, Environmental Counsel, 4910 Massachusetts Ave.
N.W., #221, Washington D.C. 20016, 202-686-7602.

Judge: June L. Green.

I. INTRODUCTION

1. This is a federal civil rights action challenging religious, racial and gender discrimination in the U.S. Navy Chaplains Corps. Plaintiff Chaplaincy of Full Gospel Churches ("CFGC") is the endorsing agency¹ for military chaplains of the Christian Protestant Charismatic tradition (hereafter "Charismatic"). CFGC chaplains represent the religious beliefs of more than six and a half million American Charismatic members in over 60,000 churches and fellowships.

2. This lawsuit is not an attack against any particular denomination, tradition or religion, nor against United States Navy (the "Navy") chaplains. *See Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985)(Army Chaplains Corps is constitutional necessity to allow soldiers to exercise their First Amendment "free exercise" rights); 32 C.F.R. § 65.3 (DOD policy is to provide chaplains to allow military to practice their religious free exercise rights) (Note 1 *supra*). Rather, this is a challenge to a bureaucratic, oligarchic system that has: a) institutionalized religious quotas and unlawful religious discrimination by rewarding some religious traditions or beliefs while unlawfully discriminating against others; b) allowed well intentioned, affirmative action goals to become illegal quotas; and c) condoned hostility to CFGC. These evils undermine the very purpose for which the Navy chaplaincy exists.

3. These quotas, actions and their related policies have resulted in: (a) the *de facto* establishment of a preferred religious group or tradition within the Navy Chaplain Corps; (b) the accompanying establishment of a religious test for Navy chaplain promotion and career opportunities; (c) the Navy's unconstitutional discrimination against CFGC Chaplains and other non-preferred religious groups in terms of promotion, retention and career opportunities based on their religious beliefs; (d) reverse discrimination through the establishment of racial and gender quotas for chaplain promotions; (e) the denial of the religious "free exercise" rights of CFGC chaplains and Navy personnel;(f) other practices and actions which unlawfully deny the free speech rights of CFGC chaplains and Navy personnel and/or otherwise discriminate against them and denigrate their service and religious beliefs; and (g) violations of federal statutes and Navy regulations addressing equal opportunity, promotion procedures and chaplain utilization.

4. CFGC brings this suit on behalf of itself and as a representative of its Navy chaplains, CFGC Navy personnel and similar Charismatic or Pentecostal faith groups, and the membership of the more than 60,000 churches and fellowships represented by CFGC (hereafter collectively "CFGC Parties").

II. JURISDICTION AND VENUE

5. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343, and 1346. A declaration of the rights of CFGC, its Navy chaplains and personnel, and its member churches and fellowships, 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 its officials which are headquartered in Washington D.C.

III. PARTIES

A. Plaintiff

6. Plaintiff CFGC is an organization formed to represent the American citizen members of independent, non-denominational charismatic or “full Gospel” churches and fellowships before the Armed Forces Chaplains Board and the military chaplain corps. It represents the Christian charismatic membership of over 60,000 churches and fellowships (1200 independent² Charismatic churches under CFGC’s covering as well as 58,000 Pentecostal and Charismatic churches under various faith groups and fellowships). These churches have an established membership of over six and a half million. Affidavit of Rev. Jim Ammerman, CFGC Director (“Ammerman”), p. 5, ¶ 21 (Exhibit 1) and 1999 Yearbook of American and Canadian Churches, p. 24 (hereafter “1999 Yearbook”) (describes CFGC)(Exhibit 2). CFGC is located in Dallas, Texas.

7. The Defendant’s unlawful policies and violations of the Constitution, other laws and its own regulations which are challenged herein have injured CFGC, CFGC Chaplains, CFGC’s Navy personnel and the members of CFGC churches as specified in ¶¶ 66 to 69 *infra*.

8. 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 related churches.

B. The Defendants

9. The Honorable Richard J. Danzig is the Secretary of the United States Navy (the “Secretary”). His office is in the Department of Navy, headquartered in Washington, D.C. He is sued only in his official capacity, as civilian head of the co-defendant organization, the United States Navy (the “Navy”).

10. Vice Admiral Daniel T. Oliver is the Chief of Naval Personnel, an organization within the defendant U.S. Navy, who supervises the promotion policies and personnel procedures challenged herein. Admiral Oliver’s office is in the Navy Department in Washington, D.C.

11. 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 commissioned officers possessing specialized education, training and experience to meet the spiritual needs of those who serve in the Navy and their families. The Navy is in Washington, D.C.

IV. DEFINITIONS

12. The Navy divides its Christian personnel into three general categories: Catholic, liturgical Protestant, and non-liturgical Protestant. 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. Navy chaplains use “liturgical Protestant” to collectively describe those Christian denominations whose religious services are characterized by a set liturgy or order of worship. This primarily includes those Protestant traditions or denominations that began during the Protestant Reformation and who retained an established liturgy in their worship services such as the Lutheran and Episcopal denominations, and the Presbyterian and Methodist³ denominations which later evolved from them.⁴

Navy chaplains sometimes refer to these liturgical denominations as “high church”, “main line churches” or, since the common feature of these liturgical denominations is that they all practice infant baptism, “baby baptizers”. As used herein, “liturgical Protestant” shall mean chaplains of the Lutheran, Episcopal, Methodist, and Presbyterian denominations and Orthodox tradition.

b. “Non-liturgical” refers to these Christian Protestant 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 and their clergy do not usually wear vestments or special religious dress during services. Some Navy chaplains refer to these faith groups as “low church”. Examples of low church traditions are: Baptist, Evangelical, Pentecostal and Charismatic.

V. THE FACTUAL BASIS FOR THIS LAWSUIT

A. CFGC’S MISSION AND FUNCTION

13. CFGC was founded to endorse as chaplains those clergy who meet the Department of Defense (“DOD”) requirements for chaplains⁵ and whose religious beliefs reflect those of CFGC’s member churches. Ammerman at 4, ¶ 14 (Exhibit 1). Its founder and Director, the Rev. Jim Ammerman, is a retired U.S. Army Chaplain (Colonel). *Id.* at 2, ¶ 8.

14. The Armed Forces Chaplain Board approved CFGC as an endorsing agency for military chaplains in 1984 and CFGC began endorsing chaplains for the Army and Navy in 1985. *Id.* at 5, ¶ 20.

15. CFGC endorsed chaplains have met all requirements for the Navy Chaplain Corps. *See* 32 C.F.R. part 65.5 (criteria for chaplains).

16. Once commissioned, CFGC maintains contact with its military chaplains, providing encouragement, spiritual and career guidance, and other appropriate physical or spiritual assistance. Ammerman at 9, ¶ 36.

B. Evidence of Navy Religious Discrimination Against CFGC Chaplains

17. CFGC began endorsing chaplains for the Army and Navy in 1985, and for the Air Force in 1990.

18. All CFGC chaplains are drawn from the same pool of chaplain candidates and must meet the same criteria for commissioning. Yet, CFGC’s dismal Navy chaplain promotion history stands in sharp contrast with the excellent experience of CFGC’s Army and Air Force chaplains. *Id.* at 6-8, ¶¶ 23-32 (Exhibit 1).

19. Whereas CFGC chaplains in *all* other military services are promoted and advance at or above the general rate for chaplains, the promotion rate for CFGC Navy chaplains is far below that of Catholic and liturgical Protestant chaplains and below the over all Navy chaplain promotion rate. *Id.*

a. *Army Experience.* Beginning in 1985, CFGC has endorsed 85 Army chaplains to active duty. 78 remained past their three year initial tour, and of the 23 eligible for promotion to Major (0-4)⁶, the Army and Air Force equivalent to Lieutenant Commander (“LCDR”) in the Navy, all 23 were selected for promotion to Major (0-4) with 3 selected below the zone⁷. At the 0-5 or Lt. Colonel level (corresponding to rank of Commander in the Navy), 3 of 5 eligible CFGC Major (0-4) Army chaplains have been selected and promoted. In 1990, the Army Chief of Chaplains commended the outstanding quality of CFGC chaplains. *Id.* at 6, ¶ 25-27. A CFGC chaplain received the Army’s Fiscal Year (“FY”) 98 “Chaplain of the Year” Award. In the Army reserves, two CFGC chaplains are Colonels (0-6) and three are Lt. Col. (0-5).

b. *Air Force Experience.* The Air Force did not accept CFGC endorsed chaplains until 1990, six years after CFGC began endorsing chaplains for the Army and Navy. CFGC now has 10 active duty Air Force chaplains and 14 in the A.F. Reserves. All CFGC eligible 0-3 chaplains have been selected for Major (0-4). CFGC’s Air Force chaplains have not had sufficient time in service or grade to be considered for promotion to Lt. Colonel (0-5).

c. *Navy Experience*. In the 15 years since CFGC began endorsing charismatic chaplains for the active Navy (the same length of time as for the Army), a total of 32 CFGC endorsed chaplains entered active Navy service, but only five CFGC chaplains had been selected for Lt. Commander (0-4) until the recent FY 2000 Board when 2 of the 3 CFGC chaplains under consideration were selected (the third candidate had been passed over twice before). To date, *no* active duty CFGC Navy chaplain has been selected for Commander(0-5).

(1). Four CFGC chaplains considered for promotion to Commander (0-5) had been selected for post-graduate schooling, supposedly based on the strength of their records. The Secretary's guidance to Navy Chaplain promotion boards states that "post graduate education and specialty skills ... are important to our Navy, and represent a key investment in our future" and should count toward promotion. See 1996 Precept Concerning An FY 97 Selection Board ..., Enclosure 2, p. 2-3. Yet, despite this admonition, *not one* of those four CFGC Navy chaplains selected for post-graduate studies and considered for promotion to Commander (0-5) has been promoted; two have left the service after non-selection.

(2). In contrast to the active duty Navy, CFGC has endorsed 14 chaplains in the Naval Reserve which has a different promotion system; 2 have been promoted to LCDR (0-4), one of whom was passed over to 0-4 while on active duty, and one has been promoted to Commander (0-5).

(3). The FY 1998 Chaplain Lt. Commander promotion board provides an example of the Navy's bias toward non-liturgical Pentecostal and Charismatic chaplains. That board considered 7 non-liturgical, Pentecostal chaplains including 1 from CFGC; none was selected for promotion.

C. Other Examples of Navy Anti-CFGC Bias and Discrimination

20. On information and belief, Navy senior chaplains have denied or restricted CFGC chaplains access to Navy facilities for conducting full gospel services or have removed them from preaching or conducting religious services solely because they were CFGC chaplains.

21. CFGC chaplains have also been criticized and berated for preaching and teaching on truths of the Christian faith and the Charismatic tradition.

22. Commenting on those who attended the CFGC full gospel service at one Navy duty station, a senior chaplain told his subordinate CFGC chaplain, "People who believe like that have no place worshiping on base and chaplains from those groups shouldn't even be in the Navy."

23. On information and belief, senior Catholic and liturgical Protestant chaplains have placed lower ranking liturgical Protestant or Catholic chaplains in Navy chapel or ministry positions in place of or over CFGC chaplains solely on the basis of the senior chaplain's hostility to CFGC's tradition and faith.

24. On information and belief, senior liturgical Protestant chaplains have attempted to force the general Protestant service, and all Protestant services including CFGC services, into a liturgical Protestant mold.

25. On information and belief, liturgical Protestant and Catholic senior chaplains have purposely given CFGC chaplains lower performance ratings than similarly situated subordinate liturgical Protestant and Catholic chaplains solely on the basis of the CFGC chaplains' religious identification and beliefs and despite evidence of the CFGC chaplain's superior performance.

26. The fact that the above incidents have taken place and have involved senior Navy chaplains is the logical extension of the Navy Chaplain Corps' institutionalized bias against CFGC and other non-liturgical Protestant denominations and faith groups.

VI. THE NAVY'S RELIGIOUS DEMOGRAPHICS

27. The Armed Forces records religious preference data for the individual service members. A 7/8/98 Armed Forces Religious Preference Report (hereafter "AFRPR") by the Defense Manpower Data Center is attached at Exhibit 3. This data has special relevance to this case because it provides a factual religious demographic background against which to measure CFGC's allegations and the reasonableness of the Navy's actions and policies.

28. The AFRPR data shows that the actual Navy membership of the liturgical Protestant denominations at issue here represent less than 10% of all Department of Navy ("DON") active duty personnel, i.e., both sailors and marines.⁸ Specifically, those of various Methodist named or affiliated denominations, i.e., those who have Methodist, Wesley or Asbury in their name, represent approximately 3.78% (20,776) of all DON personnel (549,800); Presbyterian related denominations represent 1.05% (5,781); the various Lutheran denominations represent 2.90% (15,937); Episcopal and Reformed Episcopal represent 0.73% (4,039); Orthodox represent 0.1% (256).

29. Adding these totals with Catholics, another major liturgical denomination, who represent 24.09% (132,429) results in a combined total of approximately 32.55%, less than one-third of the Navy's total personnel.

30. CFGC represents over 6.5 million Americans who belong to over 60,000 Charismatic churches or fellowships. ¶ 6 *supra* and Exhibit 2. This membership exceeds that of the Presbyterian Church of America (3,610,753), Episcopal (2,364,559) and Evangelical Lutheran (5,185,055) denominations as reported by the 1999 Yearbook at 352 and 353 (Exhibit 4).

31. Although the Navy has a coding system to identify its chaplains by faith group or religious persuasion, the Navy has no code or system to record the religious preference of Charismatic Navy personnel from CFGC churches. Consequently, although CFGC's membership exceeds many liturgical Protestant denominations, the Navy ignores CFGC's existence by denying its members identification and making it impossible to determine CFGC's Navy population.

32. This religious identification information is recorded on the individual's dog tags and personnel records, providing information in case of injury, sickness or death. It is also used to evaluate the religious needs of sailors and marines. It is impossible for the Navy to meet the religious needs of its CFGC members without determining who CFGC Navy personnel are or how many there are.

VII. THE NAVY CHAPLAIN CORPS

33. From its founding as a nation, the United States has recognized the importance of meeting the spiritual needs of its Armed Forces men and women. To meet this need and provide for the religious "free exercise" rights of soldiers, sailors and airmen, the United States provides military chaplains. *See, e.g., Katcoff*, 755 F.2d at 225 (providing a brief history of Army chaplains from the Continental Army and Continental Congress in 1775 to present era). Congress has authorized a Navy Chaplain Corps. 10 U.S.C. §§ 5142 (Chaplain Corps) and 6031 (addressing chaplains and divine services).

34. Because American military personnel come from the wide spectrum of religions and religious beliefs that make up America, Armed Forces chaplains, including the Navy, are also drawn from that same spectrum. To avoid governmental entanglement in religious matters and questions, DOD recognizes "endorsing agencies" representing different denominations and faith groups which recommend or "endorse" candidates to the Armed Forces' chaplain corps, including the Navy. Endorsing agencies must meet the DOD criteria at 32 C.F.R. part 65.5.

35. Once commissioned on active duty, Navy chaplains are subject to the same career opportunities and limitations as other Navy officers.

a. After initially active duty service for three years, the Navy Chaplain command decides which Navy chaplains may remain on active duty.

b. To continue their Navy careers, chaplains are supposed to meet certain physical and moral fitness standards, perform their chaplain duties satisfactorily, and must be promoted to the next grade when considered.

c. Non-selection for promotion is called a "pass over". Two pass overs in a row normally terminates a Navy chaplain's active duty career, just like any other Navy officer. 10 U.S.C. § 632.

36. Until the late 1980s, the allocation of authorized Navy chaplains between the various faith groups was based on objective criteria, the relative percentage a faith group or denominations's membership in the total American religious population as reported in sources such as the annual Yearbook of American and Canadian Churches. See Exhibit 4. 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.

37. In the late 1960s and 1970's, the religious demographics began a large, steady and measurable shift away from liturgical Protestant denominations, to non-liturgical Protestant churches, such as CFGC member churches. This trend continues today.

38. Faced with this shrinking liturgical Protestant denominational membership and its implications for Navy chaplain authorizations, in the late 1980s the Navy abandoned its "objective" criteria (linking faith group membership with chaplain authorizations) for an amorphous "needs of the service", while continuing to emphasize recruiting of liturgical Protestant chaplains despite the shrinking memberships of these denominations.

39. On information and belief, the Navy also adopted "The Thirds" Policy which divides chaplain strength allocations between Catholics who received one third, and liturgical Protestant denominations who received the second third. "Others" make up the last third, including chaplains who are non-liturgical Christian, e.g. CFGC and Pentecostal, and non-Christian, e.g. Jewish, Mormon. In other words, one third of Navy chaplain promotions, retentions on active duty and accessions were allegedly reserved for liturgical Protestant chaplains, whereas this group represented less than one tenth of the religious membership of the Navy. ¶28 *supra* and AFRPR (Exhibit 3).

a. The goal and effect of this Thirds Policy was to maintain liturgical control of the Navy Chaplain Corps.

b. Analysis of promotion board results shows that this policy remains in effect.

40. On information and belief, the goal of the unconstitutional "Thirds Policy" above was further implemented by a deliberate, discriminatory Navy retention policy whose purpose was to keep CFGC and other non-liturgical chaplains from continuing on active duty, thus assuring they would not be considered for promotion and minimizing their future influence. Although liturgical Protestant and Catholic chaplains represent approximately 33% of the Navy religious population, they allegedly received 67% of the allocations and were routinely selected for retention beyond their initial 3 year tour of service in numbers disproportionate to their denominational membership percentage in the Navy.

41. In contrast, CFGC and other non-liturgical chaplains whose faith groups had been increasing, were routinely refused retention. This policy has resulted in the over-representation of liturgical Protestant chaplains and the under-representation of non-liturgical Protestants in the Navy Chaplain program.

42. The decision as to who would stay on or be released from active duty after their initial three years of service was not based on meeting the religious free exercise needs of Navy personnel, but solely on the basis of a chaplains' religious faith group. This policy clearly discriminates against CGFC chaplains and CFGC Navy personnel and served no legitimate purpose, and was not based on remedying past discrimination nor narrowly tailored.

43. By policy and practice, the Navy Chaplain command has fostered the promotion of a disproportionate number of "high church" Protestant and Catholic Chaplains to the upper ranks, i.e., Captain and Admiral, and key billets in the Navy Chaplain Corps, i.e., those positions with decision making responsibilities.

a. In January 1995, the Chaplain of the United States Marine Corps, Ch. (Captain) Larry H. Ellis, wrote a memo to the Navy Chief of Chaplains detailing years of apparent institutional bias against "low-church" Protestant Navy chaplains in regard to assignments to the most prestigious and influential positions (which the Navy calls "billets") within the Navy Chaplain Corps. Ellis Report (hereafter "Ellis") (Exhibit 5).

b. In his memo, Captain Ellis states that as of his report (early 1995), only 14 clearly non-liturgical Navy chaplains had filled the 119 top Chaplain Corps billets over the prior 15 year period, i.e., a fill rate for non-liturgicals of 11.8%. *Id.* at ¶ 5. The fill percentage for liturgical Protestants was greater than 50%, *id.*, far out of proportion to the percentage of the liturgical denominations in the general population or the Navy. *See* ¶ 28 *supra*.

Despite this clear indicator of institutionalized religious discrimination, neither the Navy nor the Navy Chief implemented corrective action.

44. By policy and practice, the Navy Chaplain command has fostered a “high church” Protestant and Catholic monopoly of Chief of Chaplain’s position. For example, three out of the last four and four out of the last seven Chiefs of Chaplains have been Lutheran. A “low church” Protestant officer has held the Navy Chaplain Corp’s highest post, Chief of Chaplains, only once since 1917. List of Chiefs of Chaplains (Exhibit 6).

45. By policy and practice, the Navy discriminates in its chaplain retention policies on the basis of a chaplain’s religious faith group or denomination.

a. In spite of Title 10 U.S.C. § 632’s mandate that an officer who is twice passed over for promotion be separated from the Navy, chaplains from favored denominations have been retained by the Navy Chaplain command even though they have been twice passed over for promotion. For example, many Catholic chaplains who have been twice passed over have been routinely provided with additional 3rd, 4th and 5th opportunities for promotion, whereas chaplains of “low-church” Protestant denominations have routinely been separated after their two promotion pass overs.

b. On information and belief, the Navy has used the Selective Early Retirement Board (“SERB”) process to thin down the number of non-liturgical chaplains at the higher ranks, forcing them out of service early in numbers disproportionate to both the actual distribution of faith group chaplains and the Navy’s religious population, i.e., more non-liturgical chaplains get “SERBed” than liturgical chaplains. This insures domination of the Navy Chaplain Command by the liturgical tradition.

c. While “SERBing” non-liturgical chaplains, the Navy has brought liturgical chaplains back on active duty, promoting some after they have returned to active duty.

VIII. THE NAVY CHAPLAIN PROMOTION BOARD SYSTEM

46. Because the opportunity for higher rank decreases the higher one rises in the military, there are always more people qualified than positions available at the higher rank. To decide who is best qualified to fill these limited number of positions, 10 U.S.C. § 612 provides for selection boards to select officers for promotion. Promotions to the ranks at issue here, LCDR (0-4) and Commander (0-5) result from selection boards.⁹

47. A promotion board must have at least five board members, one of whom must be from the category being considered. 10 U.S.C. § 612.

48. Selection boards are supposed to evaluate a chaplain’s capacity and potential for further service based on performance as recorded in the chaplain’s fitness or evaluation reports and other appropriate career related data. 10 U.S.C. §§ 616 (best and fully qualified) and 615 (type data to be considered).

49. In contrast to the U.S. Army and U.S. Air Force which use selection boards made up of officers from other branches (both line and staff) to select chaplains for promotion by, the Navy’s chaplain selection boards are dominated by chaplains; only one board member is a non-9 chaplain line officer while the other board members are all Navy chaplains, who themselves represent denominations.

50. In spite of the stated precept that the board may consider only merit and not denominational affiliation, each promotion candidate’s three digit “faith group identifier” code is prominently displayed throughout the promotion board process. Thus, the Navy chaplain promotion board members, who themselves represent particular denominations, are clearly made aware of each chaplain candidate for selection’s denomination or faith group. This procedure has no other purpose than to identify a candidate’s faith group. to the board and thereby create a suspect religious category unrelated to any legitimate Navy objective.

51. The Navy Chief of Chaplains (the “Chief”) is a Rear Admiral and selects the chaplain board members for the Navy chaplain promotion boards.

52. On information and belief, Catholics and liturgical Protestant s have dominated Navy chaplain promotion boards despite the fact that these traditions represent less than a third of the religious preference of Navy personnel. See ¶ 28 *infra*. For example, the FY 1998 promotion board for LCDR had two Catholics and one liturgical Protestant chaplain as board members. (Exhibit 7).

53. On information and belief, the Chief of Chaplains has exercised enormous improper power and control over Chaplain promotions. This includes informing one board of his personal list of who he believed constituted “the future of the Navy.” Those chaplains so identified were promoted. CFGC chaplains, not being liturgical, were not on the Chief’s list. This is a *per se* violation of 10 U.S.C. §§ 615 (types of information to provided to board) and 616(f)(2)(improper influence on board forbidden) as well as the Navy’s promotion board policies.

Evidence of Religious Discrimination In Chaplain Promotions

54. In 1997, responding to an allegation of religious discrimination in Commander (O-5) chaplain promotions, Captain J. N. Stafford, special assistant for Navy minority affairs, submitted a report to the Chief of Naval Personnel on Navy chaplain promotion policies, (Exhibit-8). Capt. Stafford concluded that an objective analysis of the FY 1997 and 1998 chaplain promotion selection boards for Commander indicated “that the board may have systematically applied a denominational quota system.” *Id.* at 1, ¶ 2. Capt. Stafford also noted that physical fitness standards that would have kept line officers from being promoted were apparently “waived” or ignored for certain liturgical chaplains who were nonetheless promoted. *Id.* at 2, ¶ 4. The Navy took no action to eliminate its “denominational quota system” for Navy Chaplains.

55. Capt. Stafford’s report documented the fact that chaplain boards have regularly promoted liturgical/high-church Protestant and Catholic Chaplains with uncompetitive or inferior fitness reports and have failed to promote other non-liturgical/low church Chaplains with competitive or superior fitness reports. Stafford Report at 2, ¶ 4 (Exhibit 8). This systemic, illegal Navy bias, selecting less qualified candidates based on liturgical affiliation, has clearly diminished CFGC non-liturgical Protestant chaplains’ opportunity for promotion.

56. On information and belief, by policy and practice, at least one seat on each promotion board is reserved for a Catholic.¹⁰

57. Prior to a 1986 religious discrimination case brought by Ch. (then Lt.) Ronald Wilkins, it was not unusual to have two Catholics or more than one chaplain of the same faith group on the same board. In issuing an injunction against Lt. Wilkins’ discharge, the *Wilkins* Court found “that the [Navy]’s policy of placing two chaplains of the Roman Catholic faith on each and every Chaplain Corps Selection Board” was suspect and 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). Pursuant to that decision, for a time the Navy discontinued having two Catholic chaplains on every chaplain promotion board.

58. Although Catholics represent 24.09% of the Navy (Exhibit 3) 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 FY 1998 Chaplain Selection Board for Lt. Commander. (Exhibit 7). Because the Chief selects the board members, this is not an accident or the result of some random process.

Illegal Racial and Gender Classifications and Quotas

59. Navy Chaplain Promotion Board written guidelines and board actions have led to reverse race and gender discrimination by mandating strict racial and gender quotas, undermining or ignoring individual fitness and merit.

a. On April 9, 1996, the Secretary of the Navy issued a “Precept Convening an FY 97 Selection Board to Consider Officers in the Competitive Category of Chaplain Corps on the Active Duty List of the Navy for Promotion to the Permanent Grade of Commander” (the “Precept”).

b. Paragraph 3 of the “Supplemental Guidance” enclosed with the Precept establishes special considerations for the evaluation of minority and female officers and promotion board goals for these classes. The minority and female guidelines are in effect strict racial and gender quotas.

c. It is CFGC's understanding that this same guidance was provided to all Chaplain Corps promotion boards considering promotions for FY 1998, 1999 and 2000 and was applied to earlier selection boards.

60. By policy and practice, the summary records of minority and female chaplains being considered for promotion are prominently marked with a capital "M" (minority) or "F" (female) as appropriate in the upper right hand corner when these records are displayed before the board for evaluation and selection. This policy has no other purpose than to establish impermissible racial and gender classifications. As such, the Navy's racial classification policy is subject to strict scrutiny and the gender policy, if not strict scrutiny, to at least intermediate scrutiny, tests the Navy will fail.

61. At every stage in the promotion selection process, the board is presented a racial/gender score card to insure that the Secretary's minority and gender goals are met. Thus, goals have become quotas and have been applied as such.

62. The Navy has neither established, experienced nor admitted the type of prejudice or discrimination that would legally justify the Navy's quota system.

63. On information and belief, by policy and practice, the board evaluates non-minority and male chaplain records on a different basis than minority and female chaplains, applying different assumptions and presumptions to each group that have no basis in fact or experience.

68. The Navy's policy of discrimination in effect makes the members of CFGC churches and CFGC Navy personnel second class citizens, since that policy has established both a religious test for service and support, and endorses an official preferred liturgical Protestant tradition, violating the right of every citizen to be protected from the establishment of a preferred religion and to receive equal treatment under the law.

69. Based on the Navy's continued and deliberate failure to allow CFGC chaplains (and other non-liturgical chaplains) to continue on active duty, see 40-42 *supra*, and provide a fair forum for promotion and career development, CFGC has stopped recommending that Charismatic clergy consider the Navy as a viable career or ministry opportunity. Thus, the Navy's actions inhibit or deny the free exercise needs of CFGC Navy personnel, precluding their right to practice their religion and receive spiritual encouragement and support, by limiting the availability of CFGC chaplains. Ammerman at 9, ¶ 37.

70. CFGC brought the Navy Chaplain Corps's overt hostility to CFGC chaplains (as manifested by its failure to retain and promote them) to the attention of the Navy Chief of Chaplains (the "Chief"). This has produced no effect or even recognition that there is a problem. *Id.*, ¶ 35. Both the Ellis and Stafford Reports have similarly brought to the Navy's attention the nature of the religious bias in its Chaplains Corps; no change is evident in policy or practice. On information and belief, earlier reports that the Navy was biased against non-liturgical faith groups have also been ignored.

IX. THE NAVY'S ILLEGAL POLICIES AND ACTIONS

COUNT I

A. The Navy Has Unconstitutionally Established A Preferred Religious Tradition

71. The allegations of paragraphs 1 through 70 above are incorporated herein by reference as though pleaded in full.

72. The Navy has established an unlawful religious quota system that favors chaplains from liturgical denominations or traditions, e.g., Catholic and liturgical Protestant, *see* 12.a *supra*, in promotions, retention, and career opportunities while non-liturgical chaplains such as CFGC chaplains are denied these same incidents to and rewards of military service.

73. The effect of this quota system, granting religious preferences to the liturgical Protestant religious tradition, is to impermissibly endorse liturgical Protestant as an "official" preferred religious tradition in violation of the First Amendment's Establishment Clause. This illegal endorsement or establishment and its challenged policies do not serve a compelling government interest nor are they narrowly tailored to serve such an interest.

74. Additionally, on information and belief, in violation of the First Amendments' Establishment Clause and Free Exercise Clause, the Navy has tried to established a *de facto* liturgical or "high church" "General Protestant" religion, disfavoring other "Low church" Protestant forms of worship and limiting the opportunity for non-liturgical Navy personnel to meet their religious needs. In other words, the Navy has attempted to squeeze all Protestant servicemen and women (high and low church), including CFGC personnel, into a single liturgical worship mold with its "General Protestant" service while ignoring the religious needs of non-liturgical personnel. *See, e.g., ¶106 Infra.*

COUNT 2

B. The Navy's Manifest Hostility To CFGC's Charismatic Religious Tradition Violates the First Amendment.

75. The allegations of paragraphs 1 through 74 above are incorporated herein by reference as though pleaded in full.

76. The Navy's illegal religious preference system and discrimination against CFGC chaplains, is one aspect of manifest Navy hostility toward CFGC's religious beliefs in violation of the First Amendment.

77. The AFRPR provides irrefutable evidence of the Navy's religious bias and hostility against CFGC's non-liturgical Charismatic tradition, church groups and membership.

a. Although CFGC membership exceeds that of most liturgical Protestant denominations, ¶¶6, 28 *supra* and the 1999 Yearbook at 352 and 353 (Exhibit 4), the Navy has refused to record the faith group or religious tradition of CFGC Navy personnel.

b. After the Gulf War, the Armed Forces Chaplains Board developed a system that would have more clearly identified the religious preferences of all service members, including CFGC Navy personnel. The Navy torpedoed that proposed system.

78. There is no reason other than religious bias for not recording CFGC members religious preference while recording the denominational preferences of other Navy personnel. The collection of this information establishes that religious preference is important to the Navy, including being able to evaluate the religious needs of sailors and marines. The Navy cannot meet the Free Exercise needs of its CFGC members without determining their identity.

79. The Navy's refusal to record CFGC's Navy personnel's religious preference is especially suspect in light of the Navy's abandonment of its objective criteria for determining Navy chaplain allocations among faith groups. By refusing to collect information on CFGC's Navy population, the Navy can continue to ignore the fact that its subjective chaplain allocation criteria, i.e., "the needs of the service", is in fact not focused at meeting the free exercise *needs* of its personnel but at maintaining a liturgical Protestant domination. Both policies fail strict scrutiny, or any level of scrutiny, since neither has any legitimate purpose or rational basis.

80. The Navy's hostility is also evident by the indignities CFGC chaplains have suffered and lower performance evaluations they have received from senior chaplains based primarily on their identification as CFGC members.

81. The Navy's hostility violates the Establishment, Free Exercise and free speech Clauses of the Constitution's First Amendment and the equal protection component of the Fifth Amendment's Due Process Clause.

COUNT 3

C. The Navy Denies CFGC Chaplains and Navy Personnel Their Right To Freely Exercise Their Religious Tradition

82. The allegations of paragraphs 1 through 81 above are incorporated herein by reference as though pleaded in full.

83. On information and belief, by policy and practice some CFGC chaplains and like faith Navy personnel have been denied and selectively excluded from access to Navy facilities solely on the ground that the subject matter of their presentation contains religious speech from a specific viewpoint, i.e., Charismatic and low-church.

84. The Navy's discriminatory policies and hostility identified in this Complaint deny CFGC Navy personnel their First Amendment constitutional right to exercise their religion by denying or severely limiting their access to chaplains of their faith group. See 32 C.F.R. § 65.3.

a. The Navy's religious discrimination has caused CFGC to recommend that Charismatic clergy not seek commissions in the Navy chaplaincy. Ammerman at 9, ¶ 37.

b. The Navy's anti-CFGC hostility and its non-promotion and non-retention policy for CFGC chaplains has kept the number of CFGC Navy chaplains small, preventing CFGC's viewpoint or needs from being considered in Navy religious decisions.

85. The Navy's religious quota system and preferential treatment for specific religious traditions also establishes an unconstitutional religious test for Navy chaplain promotion and career opportunities that cannot survive strict scrutiny since the test has no other purpose than to deny CFGC Navy personnel their First Fifth and Amendment Rights.

86. The Navy's discriminatory policies identified herein penalize CFGC chaplains for their religious faith, free exercise of their religion, and religious speech. This results in manifest unlawful governmental hostility toward Navy Charismatic chaplains and denies CFGC Navy personnel their First Amendment Constitutional right to exercise their religion and their Fifth Amendment right to equal treatment under the law.

COUNT 4

D. THE CURRENT NAVY CHAPLAIN CORPUS' PROMOTION AND CAREER SYSTEMS EMPLOY ILLEGAL RELIGIOUS, RACIAL AND GENDER BASED QUOTAS DENYING CFGC CHAPLAINS EQUAL TREATMENT UNDER THE LAW

87. The allegations of paragraphs 1 through 86 above are incorporated herein by reference as though pleaded in full.

88. Comparison of the promotion and career advancement experience of CFGC Navy chaplains with CFGC's Army and Air Force chaplains clearly establishes that the Navy's promotion system has created an intentional and/or disparate adverse impact on CFGC's Navy chaplains.

89. In addition to the religious preference and discrimination described above, in policy and practice, the Navy makes impermissible religious, racial and gender classifications through the identification of faith group, minority and gender status of each chaplain considered for promotion. Since the Navy does not use faith group identification to insure promotions are focused at meeting the Free Exercise needs of the Navy and the racial and gender identification are not based upon any reported findings of institutional discrimination affecting the chaplains under consideration, this practice serves no other purpose than to create suspect classifications to maintain illegal quotas. This is a violation of the due process and equal protection guaranteed by the U.S. Constitution's Fifth Amendment.

90. The Navy's deliberate use of racial and religious classifications and quotas also violates the provisions of the Civil Rights Act, 42 U.S.C. § 1981, other civil rights laws, and both Department of Defense and the Navy's own regulations, and has injured CFGC chaplains.

COUNT 5

E. THE NAVY'S CHALLENGED ACTIONS DISCRIMINATE AGAINST THE CFGC PARTIES' RELIGIOUS FREE SPEECH

91. The allegations contained in paragraph 1 through 90 of the Complaint are incorporated herein by reference, the same as though pleaded in full.

92. The Navy's discrimination against CFGC chaplains and Navy personnel manifests unlawful disapproval of the religious speech that is inherent in their Charismatic tradition and way of faith. This is a violation of the rights guaranteed under the First and Fifth Amendments.

COUNT 6

F. PLACING MORE THAN ONE CHAPLAIN ON NAVY CHAPLAIN PROMOTION BOARDS VIOLATES THE FIRST AND FIFTH AMENDMENTS

93. The allegations contained in paragraph I through 92 of this Complaint are incorporated herein by reference, the same as though pleaded in full.

94. Navy Chaplain promotion boards are dominated by chaplains. Since these Navy promotion boards are not focused on meeting the religious needs of the Navy, placing more than one chaplain on Navy chaplain promotion boards:

a. Serves no legitimate purpose except to maintain unofficial but illegal religious quotas in violation of the Constitution's First and Fifth Amendments. This purpose is apparent in the display of the faith group code for each chaplain being considered for promotion throughout the board process.

b. Unconstitutionally delegates to a religious body a governmental function.

c. Allows the liturgical Protestant tradition to operate the Navy Chaplain Corps much like a religious patronage system in violation of the First and Fifth Amendments.

d. Provides an opportunity for religious bias or denominational issues to interfere with selecting the best qualified chaplains for promotion.

95. The Chief of Chaplains' control of the composition and membership of chaplain promotion boards serves no purpose or rationale except to control the composition and makeup of the Chaplain Corps in a manner to insure the continued operation of the Navy's illegal religious quota system for the benefit of preferred religious traditions in violation of the Constitution's First Amendment.

96. The Navy policies and procedures challenged in this Count are subject to strict judicial scrutiny, a test the Navy will fail since they are not related to a compelling government interest and are not narrowly tailored to achieve that purpose.

COUNT 7

G. THE USE OF CHAPLAINS TO RATE OTHER CHAPLAINS, EXCEPT IN UNAVOIDABLE CIRCUMSTANCES, VIOLATES THE FIRST AMENDMENT

97. The allegations in paragraphs 1 through 96 above are incorporated herein by reference as though pleaded in full.

98. The Navy has established organizational structures and systems, e.g., Regional Chaplains, in which senior chaplains (primarily liturgical) rate other chaplains, even when those chaplains are assigned to a specific Navy base or facility. In other words, the chaplain is rated by the Regional Chaplain rather than the commander of the base on which the chaplain serves.

99. The above structures and systems have no valid or reliable means of insuring religious neutrality, i.e., keeping religious animosity, bias or differences out of the rating process, and are without realistic, religiously neutral standards.

100. Such systems violate the First Amendment. There may be exceptions based on unusual circumstances or absolute necessity, but these are not apparent in the Regional Chaplain case.

COUNT 8

H. FUNDING OF THE NAVY CHAPLAIN CORPS EXCEEDS CONGRESS' AUTHORITY UNDER ARTICLE I, SECTION 8 OF THE CONSTITUTION'S TAXING AND SPENDING CLAUSE

101. The allegations in paragraphs 1 through 100 above are incorporated herein by reference as though pleaded in full.

102. Funding the Navy Chaplain Corps and its associated programs and activities involves a substantial expenditure of federal tax funds.

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

104. Congress' use of tax funds, including those collected from the CFGC Parties, or the Navy's use of such funds to support the establishment or endorsement of a preferred religious tradition in the Navy Chaplain Corps violates the Establishment's Clause specific prohibition on such funding or support.

COUNT 9

I. THE NAVY'S POLICY OF PROMOTING ONLY A "GENERAL PROTESTANT" SERVICE AND RESTRICTING OTHER FORMS OF NON-LITURGICAL RELIGIOUS SERVICES VIOLATES THE FIRST AMENDMENT

105. The allegations in paragraphs 1 through 104 above are incorporated herein by reference as though pleaded in full.

106. The Navy's emphasis on a liturgical General Protestant service and the subsequent disfavoring of non-liturgical Protestant services violates the First Amendment's Establishment and Free Exercise Clauses. For example:

a. In 1999 at the Navy base in Naples, Italy, there were nine English speaking non-liturgical churches off base whose membership was made up almost entirely of Navy personnel assigned to the Naples Navy base.

b. The liturgical General Protestant service on base was poorly attended.

c. The Navy would not allow the civilian non-liturgical pastors of these non-liturgical off-post churches to visit their Navy members on post, even when those members were in the hospital or had other need for spiritual or religious counseling and encouragement.

d. In the past, the Naples' Navy Chaplain office has expressed and manifested indifference to the religious and religious education needs of the base's non-liturgical Navy personnel.

e. Although DOD and Navy regulations provide for hiring civilian clergy when necessary to meet the free exercise needs, the Navy has done nothing to meet the religious needs of non-liturgical Navy personnel in Naples.

f. This example shows how the Navy simultaneously violates the First Amendment's Free Exercise and Establishment Clauses.

COUNT 10

J. DECLARATORY RELIEF PURSUANT TO 28 U.S.C. §§ 2201 AND 2202

107. The allegations in paragraphs 1 through 106 above are incorporated herein by reference as though pleaded in full.

108. There is a bona fide dispute between the CFGC parties and the Navy concerning whether the above challenged Navy policies violate the Constitution's First Amendment's Establishment, Free Exercise and Free Speech clauses and the Fifth Amendment's due process (equal protection) clause, the Civil Rights Act and the Navy's own regulations.

109. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of a party in an actual case and controversy. CFGC seeks such a declaration.

COUNT 11

K. A PERMANENT INJUNCTION IS APPROPRIATE UNDER THE CIRCUMSTANCES

110. The allegations in paragraphs 1 through 109 above are incorporated herein by reference as though pleaded in full.

111. The CFGC Parties have suffered, are suffering and will continue to suffer immediate, severe, and irreparable injury by virtue of the Navy's acts, policies and practices as set forth herein.

112. Unless restrained by this Court, the Navy's future violation of the CFGC Parties' fundamental rights guaranteed by the Constitution's First and Fifth Amendments, the Civil Rights Act and the Navy's own regulations is an absolute certainty.

113. The CFGC Parties have no plain, adequate, or complete remedy at law to address the Navy's violations of their constitutional, statutory and regulatory rights, and this suit for Injunctive and Declaratory relief is their only means of securing complete and adequate relief. No other remedy would offer the CFGC Parties substantial and complete protection from continuation of the Navy's unlawful and unconstitutional acts, policies and practices.

114. As CFGC does not have an adequate remedy at law, it seeks injunctive relief against the Navy, ordering it and its personnel to do the following, as detailed below in the prayer for relief.

X. PRAYER FOR RELIEF

WHEREFORE, CFGC prays for a declaration, injunction and judgment against the Defendants as follows:

A. DECLARATORY RELIEF

CFGC requests that this Court render a Declaratory Judgment that:

1. The following Navy policies and practices are unconstitutional as applied and suppress the CFGC Parties' fundamental rights secured by the First and Fifth Amendments to the United States Constitution, and that they also violate federal Civil Rights laws, and DOD and Navy regulations:

- a. The "Third's Policy" or Rule which distributes chaplain allocations between select faith groups or denominations.
- b. The Navy's policies of i) placing more than one chaplain on chaplain promotion selection board and, ii) allowing the Chief of Chaplains to determine chaplain promotion board members.
- c. The Navy's policy of identifying the faith group, minority and gender status of each chaplain being considered by a

promotion board.

d. The Navy's hostility to and suppression of non-liturgical alternatives to a liturgical General Protestant service and/or other religious education services, e.g., Sunday School, and the Navy's concomitant endorsement and establishment of an official liturgical General Protestant service and religious education.

e. The establishment of systems and rating chains in which chaplains normally rate other chaplains of different faith groups and which have no independent safeguards or provisions to: i) insure religious neutrality in ratings or assignments, or, ii) established criteria to insure denominational considerations do not enter into the evaluation.

2. The Navy's policy of refusing to record the religious preference of CFGC Navy personnel constitutes unconstitutional government hostility to the CFGC Parties.

3. The dominance of the Navy's senior ranks and key billets by liturgical Protestant chaplains, out of all proportion to their actual percentages in the Navy, and the concomitant absence of appropriate numbers of non-liturgical Protestant chaplains in those same ranks and billets is:

a. The result of the Navy's illegal religious discrimination and bias.

b. An illegal endorsement of the liturgical Protestant tradition.

c. A violation of the First Amendment.

4. The Navy's policy and practice of favoring certain religious denominations and discriminating against others in promotion, retention and key billeting decisions, has resulted in an unconstitutional religious test and endorsement of religion, and illegal discrimination in violation of the First and Fifth Amendments and 42 U.S.C. § 1981.

5. The equal opportunity instructions issued by the Secretary of the Navy for the Fiscal Year 1993 through 2000 chaplain promotion boards violate the Fifth Amendment to the United States Constitution and the Civil Rights Act, 42 U.S.C. § 1981 et seq, and DOD and Navy regulations and policies.

6. The Navy chaplain selection boards for Lt. Commander and Commander for FYs 1992 through 2000 have been improperly biased with religious, race and gender discrimination, that CFGC (and other non-liturgical) chaplains have been unlawfully denied a fair opportunity for promotion in violation of the Constitution, federal statutes, and DOD and Navy regulations; and that the results of such promotion boards are void and the Navy's personnel actions in response to those boards are *ultra vires*.

B. Injunctive Relief

CFGC does not have an adequate remedy at law, so CFGC seeks injunctive relief against the Navy, ordering the Defendants, their agents and employees be enjoined from:

1. Further and future discrimination in promotion, career development and billeting decisions against CFGC chaplains based on their faith group and religious beliefs.

2. Considering or displaying denomination or faith group for chaplains being considered by chaplain Promotion Selection Boards except only for the limited purpose of meeting the free exercise rights of Navy Personnel when based on actual Navy demographics.

3. Applying racial or gender quotas, or identifying the racial or gender classification of chaplains being considered for promotion, retention, career development and billeting decisions in violation of the Fifth Amendment's Due Process and Equal Protection provisions.

4. Further and future interference in any manner with the fundamental right to Free Exercise of religion by CFGC chaplains

and Navy personnel, including access to chapel and other religious and religious education facilities.

5. Further and future interfering in any manner with CFGC chaplains' fundamental Free Speech rights including the religious content and viewpoint of their speech.¹¹

6. Having more than one chaplain participate on chaplain promotion boards or having the Chief or the Deputy Chief serve as president of a chaplain promotion board.

7. Having a "reserved" seat for a particular denomination on promotion or career selection boards, except where such is needed to further the Free Exercise interests of Navy personnel based on actual and relevant Navy demographics.

8. Limiting Protestant services to a "liturgical General Protestant" service when non-liturgical Protestant chaplains are available for alternative services.

9. Restricting or denying Navy facilities for non-liturgical services or other religious activities where a non-liturgical chaplain (or authorized lay leader) is present and there are non-liturgical Navy personnel also present.

10. Having chaplains rate other chaplains, except in exceptional cases based on operational necessity, but only where there are safeguards to insure that denominational or religious neutrality is maintained and there are established objective criteria for evaluation.

C. AN ORDER

CFGC requests that the Court issue and order requiring the Navy to:

1. Eliminate all vestiges of its past religious bias and discrimination in selecting chaplains for promotion and career assignments. For chaplain promotion selection boards, this includes:

a. Removal of all reference to a chaplain's faith group or denomination in the selection process unless required to remedy past discrimination or insure that the free exercise needs of the Navy are met.

b. Allow only one chaplain to participate on such boards.

c. Insure that the one chaplain board member is chosen by a neutral system in a religiously neutral manner by Navy officials other than chaplains.

d. Provide a system of checks and balances to insure that religion, faith group or denomination does not affect the promotion or career process except to the extent necessary to insure that the Navy's free exercise needs are met.

2. Eliminate all vestiges of gender or racial quotas or categories in the promotion process and forbid the identification of race or gender, unless linked to remedying past discrimination.

3. Take all necessary immediate and affirmative actions to:

a. Bring the Navy Chaplain Corps, including its current rank structure, into line with the Navy's religious demographics and;

b. Adjust and fill Navy Chaplain Corps' key billets in a manner that is religiously non-discriminatory but corrects the current disparity between Chaplain Corps and actual Navy religious demographics and insures that chaplain career assignments are made in a non-discriminatory manner that meets the needs of the service.

4. Review all evaluations of CFGC chaplains by other chaplains and energetically and effectively investigate all allegations of religious prejudice by senior chaplains in rating CFGC chaplains. Where actual prejudice is found or bias demonstrated, correct the records and remove the prejudice from the affected CFGC chaplain's official file and career.

5. Develop new policies and guidelines that:

a. Provide approval and support for alternative non-liturgical services that meet the needs of the Navy's non-liturgical religious community at Navy installations, posts, ships and facilities and;

b. Insure that such services receive priority over General Protestant services where non-liturgicals constitute a majority at the installation, post or facility.

6. Develop a system to insure that the above reforms are working and effective.

7. Develop a system to officially record the religious preference of CFGC Navy personnel.

8. Issue the necessary orders voiding all adverse personnel actions flowing from the Thirds Policy and the unconstitutional promotion boards described herein (see X.A.1 and 6 *supra*), including but not limited to separations, and take other action to remedy the results of the Navy's illegal activities described herein.

D. Attorneys' Fees and Other Relief

1. That this Court award CFGC the reasonable costs and expenses of this action, including 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; 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. Appoint a monitor or special master to monitor the Navy's compliance and;

c. Require the Navy to provide periodic progress reports as to its progress in complying with B and C above.

DATED: January 5, 2000

Respectfully submitted,

<<signature>>

Arthur A. Schulcz, Sr.

D.C. Bar No. 453502

ENVIRONMENTAL COUNSEL

4910 Massachusetts Ave. N.W., #221

Washington D.C. 20016

202-686-7602