

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

JASON DANIEL HEAP
and THE HUMANIST SOCIETY,

Plaintiffs,

vs.

HON. CHARLES T. HAGEL,
HON. RAYMOND E. MABUS, JR.,
VICE ADMIRAL WILLIAM F. MORAN,
REAR ADMIRAL MARK L. TIDD,
REAR ADMIRAL ANNIE B. ANDREWS,
REAR ADMIRAL MARGARET G.
KIBBEN,
HON. JESSICA L. GARFOLA WRIGHT,
REAR ADMIRAL BRENT W. SCOTT,
MAJOR GEN. HOWARD D. STENDAHL,
BRIGADIER GEN. BOBBY V. PAGE,
MAJOR GEN. DONALD L.
RUTHERFORD,
BRIGADIER GEN. CHARLES R.
BAILEY,
REAR ADMIRAL DANIEL L. GARD,
REAR ADMIRAL GREGORY C. HORN,
THE UNITED STATES NAVY,
THE UNITED STATES DEPARTMENT
OF DEFENSE, and John and Jane Does #
1-40,

Defendants.

Case No.: 1:14-CV-1490-JCC-TCB

AMENDED COMPLAINT

JURY TRIAL DEMAND

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Plaintiffs Jason Daniel Heap and The Humanist Society, by and through their counsel, submit the following Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B). Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This lawsuit challenges the United States Navy and Department of Defense's rejection of an application by Jason Daniel Heap and The Humanist Society to serve in the U.S. Navy Chaplain Corps and obtain recognition as a qualified endorser of chaplains because of their Humanist beliefs.

2. Plaintiff Jason Daniel Heap is an Oxford University-educated instructor in history and theology who has spent ten years leading religious services and teaching in the United States and internationally. Dr. Heap is a Humanist and is certified as a Humanist Celebrant by The Humanist Society, a § 501(c)(3) tax-exempt organization qualified as a church under the Internal Revenue Code. As a Celebrant, Dr. Heap is deemed qualified by The Humanist Society to lead services, give ceremonial invocations, officiate at funerals and weddings, and perform other ritual functions that are also performed in other religious traditions.

3. As a Humanist, Dr. Heap does not believe in a god or gods. He believes in a system of ethical principles that are as central and guiding as the moral precepts developed in religious traditions that believe in a god or gods. Dr. Heap agrees with the Humanist Manifesto III, *Humanism and Its Aspirations*, which describes central tenets of the Humanism practiced by

The Humanist Society. He adheres to these beliefs with the strength and sincerity of traditionally recognized religious views.

4. “The primary function of the military chaplain is to engage in activities designed to meet the religious needs of a pluralistic military community” *Katcoff v. Marsh*, 755 F.2d 223, 226 (2d Cir. 1985). Plaintiffs allege that as applicants to become part of the “pluralistic military community,” Humanist applicants and their endorsing religious organizations cannot be denied access to the Navy chaplaincy because of their Humanist beliefs.

5. After consulting with religious and academic colleagues and mentors, Dr. Heap applied to become a chaplain in the U.S. Navy Chaplain Corps. Navy representatives initially welcomed and encouraged Dr. Heap. His Navy chaplain recruiter offered to expedite the application in order to ensure its speedy approval. A retired U.S. Marine Corps chaplain gave Dr. Heap a perfect score in his formal review of Dr. Heap. In response to the Navy’s encouragement, Dr. Heap made personal and financial sacrifices to advance his application, including paying out-of-pocket for several international trips necessary to the application process, medical examination fees, and relinquishing his British legal residency status and the significant benefits attendant thereto.

6. Department of Defense and Navy guidelines require chaplain applicants to obtain the endorsement of a qualified religious organization. Requiring chaplain applicants to attest to their affiliation with a particular religious organization as a prerequisite for federal office as chaplain violates the United States Constitution’s No Religious Test Clause, as it explicitly conditions federal employment on a declaration of religious affiliation

7. Applying the Department of Defense and Navy guidelines requiring endorsement from a qualified religious organization, Navy recruiters assumed Dr. Heap would receive the endorsement of a Christian organization. Dr. Heap's Navy recruiters and the Defendants named herein learned that Dr. Heap is a Humanist after The Humanist Society submitted its endorsement of Dr. Heap to the Armed Forces Chaplains Board.

8. As a matter of policy and practice, the Navy and Department of Defense do not accept Humanist chaplains because of their Humanist beliefs. Defendant Rear Admiral Margaret Kibben admitted on or about February 3, 2015 to a participant in the International Military Chief of Chaplains Conference that the Navy and Department of Defense do not accept Humanists as chaplains because "Humanist organizations never really demonstrate the benefits of a Humanist Chaplain compared to a Christian Chaplain." A Navy chaplain corps spokesperson has admitted that the Navy Chaplain Corps does not consider The Humanist Society as "a religious organization by any accepted definition." Because the Navy and DoD do not accept Humanist chaplains, the Navy Defendants' attitude toward Dr. Heap and The Humanist Society's application changed radically after receiving The Humanist Society's endorsement of Dr. Heap. Dr. Heap's Navy recruiter informed Dr. Heap that his Humanist endorsement could pose a problem for the application. All discussion of expediting the application ceased. In internal communications, Navy Chaplain Corps officials derided Dr. Heap as "the humanist so-called applicant."

9. Contrary to an offer by Dr. Heap's Chaplain Corps Recruiter to expedite Plaintiffs' application, enabling Dr. Heap to interview for a chaplain position in the summer of 2013, Dr. Heap's disclosure of his endorsement by The Humanist Society prompted an eleven-month delay. Only after legal counsel for The Humanist Society contacted the Navy and

threatened litigation did the Navy grant Dr. Heap an interview. Less than three weeks after his interview, the Navy denied Plaintiffs' application, without providing any reason for the denial.

10. Plaintiffs' application was not denied because of any fault in their abilities or credentials or because a better-qualified applicant emerged. Dr. Heap and The Humanist Society's qualifications exceed the standards articulated by the Navy and DoD. Rather, the "Navy/Defendants" and Armed Forces Chaplains Board ("AFCB") denied Plaintiffs' application because of their Humanist beliefs. The Religious Freedom Restoration Act and the U.S. Constitution's Religious Test Clause and First and Fifth Amendments prohibit the discriminatory denial of Plaintiffs' application on the basis of their religious views.

11. According to statistics compiled by the Department of Defense Equal Opportunity Management Institute, 3.6 percent of the U.S. military identifies as Humanist. However, there are no Humanist chaplains. As a result of the Navy and AFCB's decision to deny Plaintiffs' application, there are still no Humanist chaplains in the U.S. Navy or in any branch of the armed services. The absence of even a single Humanist chaplain impairs the religious exercise of Humanists in the Navy, some of whom are members of The Humanist Society. The Humanist Society cannot provide chaplains to the Navy and Armed Forces without obtaining recognition as a qualifying religious organization from the AFCB. Because endorsing an otherwise qualified and approved chaplain is a prerequisite to becoming a qualified endorser, but the Navy denied Dr. Heap's application, The Humanist Society did not obtain recognition from the AFCB, and the Navy and Armed Forces Chaplains Board require The Humanist Society to undergo a more rigorous administrative review of The Humanist Society's qualifications to act as the endorser of future potential chaplains in the Navy and other branches of the armed services.

12. The Defendants named herein are the individuals who, according to the Navy and DoD's binding regulations, were responsible for the decision to deny or recommend denying Plaintiffs' application. Each of these Defendants applied the Navy and DoD's discriminatory policy of refusing to admit Humanist chaplains and endorsing organization because of their Humanist beliefs to Dr. Heap and The Humanist Society. As a remedy for these Defendants' discriminatory denial of Plaintiffs' application, Plaintiffs seek instatement of Dr. Heap as a Navy chaplain and recognition of The Humanist Society as a qualified endorser, backpay, lost wages, monetary damages, attorney's fees and costs, and other declaratory and equitable relief.

JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1346, & 1361; 29 U.S.C. § 1391(e); and Va. Code Ann. § 8.01-328.1.

14. Venue is appropriate under 28 U.S.C. § 1391(e) because the defendants sued in their official capacities are federal agencies and their officers and employees, and at least one of these defendants' offices is located in this district. At least one defendant named in his/her official capacity performs a substantial part of his/her official duties in this district. Venue is also appropriate under 28 U.S.C. § 1391(e) because Plaintiff Jason Daniel Heap is a resident of this district.

15. Venue is appropriate under 28 U.S.C. § 1391(b) because at least one of the defendants named in their individual capacities is a resident of this district and a substantial part of the events giving rise to Plaintiffs' claims occurred in this district.

PARTIES

A. Plaintiffs

16. Jason Daniel Heap is a Humanist Celebrant accredited by The Humanist Society to serve in the military as a Humanist Chaplain. Dr. Heap currently serves as Coordinator of the United Coalition for Reason, a nonprofit organization that helps nontheistic groups work together to gain more members and have a greater impact in their local areas. Dr. Heap has taught courses on religion and philosophy at elementary and secondary schools in the United Kingdom, Kuwait, and Nigeria since 2004. Prior to his teaching career, Dr. Heap served as a licensed minister of First Baptist Church in LaGrange, Texas, and delivered sermons and conducted worship services at Methodist, Baptist, and other Christian churches from 1991 until 2000. Dr. Heap's academic degrees include a Doctor of Education in Administrator Leadership for Teaching and Learning from Walden University; a Master of Studies from The University of Oxford in Ecclesiastical History, awarded by the Faculty of Theology; a Master of Divinity in Counselling and Religion from Brite Divinity School of Texas Christian University; and a Bachelor's in Philosophy and Practical Theology (double majors) from Howard Payne University in Brownwood, Texas. Dr. Heap resides within this district in Arlington, Virginia.

17. The Humanist Society is a § 501(c)(3) non-profit organization incorporated under California law and qualified as a church under Internal Revenue Code § 170(b)(1)(A)(i). Founded in 1939, The Humanist Society provides ministry to a lay constituency of Humanists adhering to the values of the Humanist Manifesto III. The Society prepares Humanist Celebrants to lead ceremonial observances, including weddings and funerals, across the nation and worldwide, and seeks to strengthen Humanist communities by providing resources about Humanism and access to Humanist Celebrants, including to Humanist communities within the

Armed Services. The Humanist Society maintains an active membership, including members who are enlisted in the United States Navy. The Board of Chaplaincy Certification, Inc., an affiliate of the Association of Professional Chaplains (“APC”), formally recognizes The Humanist Society as a “faith group” qualified to endorse chaplains and for its chaplains to seek APC certification. The Humanist Society provided the Armed Forces Chaplains Board with its endorsement of Jason Heap as an applicant to become a Navy Chaplain and all required administrative documentation.

B. Navy Defendants

18. The following individuals named as Defendants are officers and/or employees of the United States Navy and are referred to collectively as the “Navy Defendants.”

19. The Honorable Raymond E. Mabus, Jr. is the Secretary of the United States Navy. He assumed office on June 18, 2009. He is named in his official capacity as civilian head of the co-defendant organization The United States Navy (the “Navy”). His office as Secretary of the United States Navy is located in the Pentagon in Arlington, Virginia. Secretary Mabus carries out his official duties in part at the United States Naval facilities in Norfolk, Virginia, and in Arlington, Virginia.

20. The United States 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 Chaplain Corps is a branch of the Navy. 10 U.S.C. § 5142. The Navy’s official headquarters are located in the Pentagon in Arlington, Virginia. The Navy maintains other ongoing and systematic contacts with this district, including the Naval Support Facility located at 701 South Courthouse Road in Arlington, Virginia, and the Naval Station in Norfolk, Virginia.

21. Vice Admiral William F. Moran is the Chief of Naval Personnel. Defendant Moran assumed office on August 2, 2013. According to Navy regulations, the Chief of Naval Personnel is responsible for making the final determination as to whether applications to serve as Navy chaplain are accepted or denied. *See* Secretary of the Navy Instruction (“SECNAVINST”) 5351.1 ¶ 5.c (April 21, 2011). Defendant Moran serves as Deputy Chief of Naval Operations concurrently with his position as Chief of Naval Personnel. Defendant Moran’s principal office in his capacity as Deputy Chief of Naval Operations is located at the Naval Support Facility located at 701 South Courthouse Road in Arlington, Virginia. Exercising his responsibility and authority under the above-mentioned regulation, Defendant Moran made and/or approved the final determination to deny Plaintiffs’ application. Defendant Moran’s determination was based on Plaintiffs’ Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. His office as Chief of Naval Personnel is located in the Pentagon in Arlington, Virginia. In his capacity as Chief of Naval Personnel and as Deputy Chief of Naval Operations, Defendant Moran maintains ongoing and systematic contacts with this District by supervising all Navy personnel matters at Navy facilities in this district, including the Naval Support Facility in Arlington, Virginia, and the Naval Station in Norfolk, Virginia. Defendant Moran is named in his official and individual capacities.

22. Rear Admiral Annie B. Andrews is Commander, Navy Recruiting Command. She assumed office on August 29, 2013. In her capacity as Commander, Navy Recruiting Command, Rear Admiral Andrews maintains ongoing and systematic contacts with this district by supervising and directing the operation of permanent Navy recruiting centers located in this district, including the Navy Recruiting District headquarters in Richmond, Virginia. According

to Navy regulations, the Commander, Navy Recruiting Command may determine on behalf of the Deputy Chief of Naval Operations whether an applicant is qualified for a Navy chaplaincy. *See* Chief of Naval Operations Instruction (“OPNAVINST”) 1120.9 ¶ 6.b.2 (Dec, 20, 2005). Exercising her responsibility and authority under the above-mentioned regulation, Defendant Andrews determined to deny Plaintiffs’ application. Defendant Andrews’ determination was based on Plaintiffs’ Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. She is named in her official and individual capacities.

23. Rear Admiral Margaret G. Kibben is the current Chief of Navy Chaplains. She assumed office on August 1, 2014. As Chief of Navy Chaplains, Defendant Kibben currently serves on the Armed Forces Chaplains Board (“AFCB”). *See* Department of Defense Instruction (“DoDI”) 5120.08 ¶ 5.1.1 (August 20, 2007). From July 2010 until August 1, 2014, Defendant Kibben served as Navy Deputy Chief of Chaplains. While serving as Navy Deputy Chief of Chaplains, Defendant Kibben also served on the Armed Forces Chaplains Board. In her capacities as Chief of Chaplains and Deputy Chief of Chaplains, Defendant Kibben maintains ongoing and systematic contacts with this district by supervising Navy chaplains located at Navy installations in this district, including the United States Navy facilities in Norfolk, Virginia. According to Navy regulations, the Chief of Navy Chaplains is required to approve or disapprove the recommendation of the Chaplain Appointment and Retention Eligibility Board (“CARE Board”) as to applications for the Navy chaplaincy. SECNAVINST 5351.1 ¶ 5.c. Exercising his responsibility and authority under the above-mentioned regulation, Defendant Kibben’s predecessor in office, Defendant Rear Admiral (ret.) Mark Tidd, determined to deny

Plaintiffs' application. Defendant Tidd's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. As described below, Defendant Kibben also determined to deny Plaintiffs' application as a member of the AFCB. Defendant Kibben's office as Chief of Navy Chaplains is located in the Pentagon in Arlington, Virginia. She resides within this District at 6914 Park Terrace Drive, Alexandria VA 22307. She is named in her individual and official capacities.

24. Rear Admiral (Ret.) Mark L. Tidd is the former Chief of Navy Chaplains. He assumed office as Chief of Navy Chaplains on August 27, 2010, and retired on August 1, 2014. While serving as Chief of Chaplains, Defendant Tidd also served on the Armed Forces Chaplains Board. As Chief of Navy Chaplains, Defendant Tidd was required to approve or disapprove the recommendation of the CARE Board as to candidates' applications to become Navy chaplains. SECNAVINST 5351.1 ¶ 5. Exercising his responsibility and authority under the above-mentioned regulation, Defendant Tidd determined to deny Plaintiffs' application. Defendant Tidd's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. On information and belief, Defendant Tidd made the decision to deny Plaintiffs' application in the Pentagon located in Arlington, Virginia. Defendant Tidd is named in his individual capacity.

25. John and Jane Does # 1-20 are members of the May 2014 CARE Board that reviewed Plaintiffs' application. They are Navy and Marine Corps commissioned officers. Chief of Chaplains Instruction ("COCINST") 1110.1H ¶ 4 (May 8, 2007). They will be identified and

named after discovery. They are referred to collectively as the “CARE Board Defendants.”

According to Navy regulations, the CARE Board is required to interview and provide a recommendation to approve or disapprove individual applicants for the Navy chaplaincy. COCINST 1110.1H ¶¶ 5, 8. Exercising their responsibility and authority under the above-mentioned regulation, The CARE Board recommended denying Plaintiffs’ application. The CARE Board Defendants’ recommendation was based on Plaintiffs’ Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. The CARE Board Defendants are sued in their official and individual capacities.

C. Armed Forces Chaplains Board Defendants

26. The following Defendants are officers and/or employees of the U.S. Department of Defense with authority or control over the Armed Forces Chaplains Board (“AFCB”) and are referred to collectively as the “AFCB Defendants.” According to Department of Defense and Navy regulations, all applicants to become a Navy chaplain must receive the endorsement of a qualified religious organization. *See* Department of Defense Instruction (“DoDI”) 1304.28 ¶ 6.1. The determination of whether the organization may serve as a qualified endorsing agency must be made by the AFCB and by the Under Secretary of Defense for Personnel and Readiness, acting upon the recommendation of the AFCB. *See* DoDD 5120.08 ¶ 3 & 1304.19 ¶ 5.2.1 (April 23, 2007). The AFCB must consist of the Chief and active Deputy Chief of Chaplains from the Navy, Army, and Air Force. DoDD 5120.08 ¶ 5.1.1. Pursuant to these regulations, the AFCB Defendants determined to withhold recognition from The Humanist Society as a candidate to become a qualified ecclesiastical endorser. The AFCB Defendants made this determination because, as a matter of policy and practice, the Navy and Department of Defense do not

recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains.

27. The Honorable Charles T. Hagel is the United States Secretary of Defense. He assumed office on February 27, 2013. Defendant Hagel resides in this District in McLean, Virginia. His office as Secretary of Defense is located in this District in the Pentagon in Arlington, Virginia. Defendant Hagel is named in his official capacity as civilian head of the co-defendant organization The United States Department of Defense (“DoD”). Defendant Hagel announced his resignation as Secretary of Defense on November 25, 2014, effective when the United States Senate confirms his replacement. In the event the Senate confirms Secretary Hagel’s replacement, the name of his replacement is substituted in place of Secretary Hagel’s in his or her official capacity.

28. The United States Department of Defense is an executive branch department of the federal government created by an Act of Congress. 10 U.S.C. § 111. The Armed Forces Chaplains Board is a subordinate body of the Department of Defense governed by Department of Defense directives. *See* DoDD 5120.08 (Aug. 20, 2007). The Department of Defense’s Headquarters are located in this District in the Pentagon in Arlington, Virginia.

29. The Honorable Jessica L. Garfola Wright is the Under Secretary of Defense for Personnel and Readiness. She assumed office on January 1, 2013. According to Department of Defense directives, Defendant Wright is response for approving or disapproving the recommendations of the Armed Forces Chaplains Board on “religious, ethical, and moral standards for the Military Services” and policies for “the protection of the free exercise of religion according to Amendment I to the Constitution of the United States” DoDD 5120.08

¶ 5. Exercising her responsibility and authority under the above-mentioned regulation, Defendant Wright approved the AFCB's recommendation to withhold recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Wright's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. In her capacity as Under Secretary of Defense for Personnel and Readiness, Defendant Wright maintains ongoing and systematic contacts with this district by supervising personnel matters at DoD facilities located in Virginia. Her office as Under Secretary of Defense for Personnel and Readiness is located in the Pentagon in Arlington, Virginia. She resides at 9372 Colbert Ct., Fairfax, Virginia 22032. She is sued in her individual and official capacities.

30. Defendant Margaret G. Kibben, also named above, is currently a member of the AFCB in her capacity as Navy Chief of Chaplains, and was a member of the AFCB in her capacity as Navy Deputy Chief of Chaplains from July 2010 until her appointment as Navy Chief of Chaplains. Exercising her responsibility and authority under the regulations described in paragraph 26, Defendant Kibben withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Kibben's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains.

31. Defendant Mark L. Tidd, also named above, was a member of the AFCB in his capacity as Navy Chief of Chaplains from August 27, 2010 until August 1, 2014. Exercising his responsibility and authority under the regulations described in paragraph 26, Defendant Tidd

withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Tidd's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains.

32. Rear Admiral Brent W. Scott has served as Navy Deputy Chief of Chaplains since July 2014. In that capacity, Defendant Scott currently serves on the AFCB. In his capacity as Navy Deputy Chief of Chaplains, Defendant Scott maintains ongoing and systematic contacts with this District by supervising Navy chaplains located at Navy installations in this district, including the United States Navy facilities in Norfolk, Virginia. He is named in his official capacity. He resides at 12319 Sleepy Lake Ct, Fairfax, Virginia 22033.

33. Major General Howard D. Stendahl has served as Air Force Chief of Chaplains since August 2012. Defendant Stendahl has served on the AFCB since his appointment as Air Force Chief of Chaplains. Defendant Stendahl's office as Air Force Chief of Chaplains is located in this District in the Pentagon in Arlington, Virginia. Defendant Stendahl maintains ongoing and systematic contacts with this district by supervising Air Force chaplains located in this District, including at Langley Air Force Base. Exercising his responsibility and authority under the regulations described in paragraph 26, Defendant Stendahl withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Stendahl's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. He is named in his individual and official capacities.

34. Brigadier General Bobby V. Page has served as Air Force Deputy Chief of Chaplains since August 2012. Defendant Page has served on the AFCB since his appointment as Air Force Deputy Chief of Chaplains. Defendant Page maintains ongoing and systematic contacts with this District by supervising Air Force chaplains located in this District, including at Langley Air Force Base. Exercising his responsibility and authority under the regulations described in paragraph 26, Defendant Page withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Page's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. On information and belief, Defendant Page made and/or participated in this decision at the Pentagon in Arlington, Virginia. He is named in his official and individual capacities.

35. Rear Admiral Daniel L. Gard has served as Navy Deputy Chief of Chaplains for Reserve Matters since October 1, 2013. He has served on the AFCB since his appointment as Navy Deputy Chief of Chaplains for Reserve Matters. In his capacity as Navy Deputy Chief of Chaplains for Reserve Matters, Defendant Gard maintains ongoing and systematic contacts with this District by supervising chaplain support for Reservists serving at Navy installations in this District, including the United States Navy facilities in Norfolk, Virginia. Exercising his responsibility and authority under the regulations described in paragraph 26, Defendant Gard withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Gard's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept

Humanists as chaplains. On information and belief, Defendant Gard made and/or participated in this decision at the Pentagon, located in this District. He is named in his official and individual capacities.

36. Rear Admiral Gregory C. Horn has served as Deputy Chief of Chaplains for Reserve Matters and Director of Religious Programs, Marine Forces Reserve, from October 7, 2010, until September 23, 2013. As Deputy Chief of Chaplains for Reserve Matters and Director of Religious Programs, Defendant Horn served on the AFCB that received The Humanist Society's required paperwork to act as religious endorser. Exercising his responsibility and authority under the regulations described in paragraph 26, Defendant Horn withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Horn's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. Rear Admiral Horn's principal office was located in the U.S. Marine Corps Headquarters located at 1555 S. Southgate Road in Arlington, Virginia. On information and belief, Defendant Horn made and/or participated in this decision while at the Pentagon and/or the Marine Corps Headquarters located in this district. Defendant Horn is named in his individual capacity.

37. Major General Donald L. Rutherford has served as Army Chief of Chaplains since July 7, 2011. He has served on the AFCB since his appointment as Army Chief of Chaplains. Exercising his responsibility and authority under the regulations described in paragraph 26, Defendant Rutherford withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Rutherford's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and

practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. He resides at 5435 Woodlawn Drive, Fort Belvoir, Virginia, 22060. Defendant Rutherford's office as Army Chief of Chaplains is located in the Pentagon in Arlington, Virginia. In his capacity as Army Chief of Chaplains, Defendant Rutherford maintains ongoing and systematic contacts with this district by supervising Army chaplains located at Army installations in this district, including in the U.S. Army base in Fort Lee, Virginia. Defendant Rutherford is named in his individual and official capacities.

38. Brigadier General Charles R. Bailey has served as Deputy Army Chief of Chaplains since July 28, 2011. He has served on the AFCB since his appointment as Army Chief of Chaplains. Exercising his responsibility and authority under the regulations described in paragraph 26, Defendant Bailey withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Defendant Bailey's determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. He resides in this District at 20610 Brumley Gap Road, Abingdon, Virginia 24210. In his capacity as Deputy Army Chief of Chaplains, Defendant Bailey maintains ongoing and systematic contacts with this district by supervising Army chaplains located at Army installations in this district, including in the U.S. Army base in Fort Lee, Virginia. Defendant Bailey is named in his individual and official capacities.

39. John and Jane Does # 21-30 are additional current members of the Armed Forces Chaplains Board. They are all officers and/or employees of the United States Navy, Army, or Air

Force. *See* DoDI 5120.08 ¶ 5 (August 20, 2007). They will be identified and named after discovery. They are named in their official capacities.

40. John and Jane Does # 31-40 are additional members of the Armed Forces Chaplains Board between July 1, 2013 and May 27, 2014. Exercising their responsibility and authority under the regulations described in paragraph 26, these Defendants withheld recognition from The Humanist Society as a qualified ecclesiastical endorser because of its Humanist beliefs. Their determination was based on Plaintiffs' Humanist beliefs because, as a matter of policy and practice, the Navy and Department of Defense do not recognize Humanism as religion, accord it equal treatment to others religions, or accept Humanists as chaplains. They are named in their individual capacities.

FACTUAL ALLEGATIONS

I. DEFINITIONS

41. **Humanism.** "Humanism" as described herein is the belief system followed by Jason Daniel Heap and the Humanist Society, Dr. Heap's endorsing agency. Humanists of the Humanist Society, including Jason Daniel Heap, identify with the *Humanist Manifesto III: Humanism and its Aspirations*, drafted in 2003 by the American Humanist Association as a contemporary expression of Humanist beliefs. *See* American Humanist Society, *Humanist Manifesto III* (2003), http://americanhumanist.org/humanism/Humanist_Manifesto_III ("Manifesto III"). The Manifesto identifies ethical principles that are as central and guiding as the moral precepts developed in religious traditions that emphasize the centrality of a god or gods. Unlike such traditions, Humanism emphasizes ethical principles as avenues to the ultimate goal of human flourishing, regardless of the existence of a god or gods, based upon fundamental

commitments that address basic questions such as the nature and source of humanity's obligations toward one another, the place of humanity in nature, and the ultimate goals and purposes of life. Adherents to Humanism are referred to as "Humanists."

42. **Theism and Non-Theism.** "Theism" refers to a belief system that is organized around and requires the existence of a god or gods. "Non-theism" refers to a belief system that, like Humanism, is not organized around, and does not require, the existence of a deity.

43. **Atheism.** "Atheism" means a lack of a belief in a god or gods. In common usage, atheism may mean anti-theism, belief that there is no god, or may be used as a personal identifier for someone who otherwise holds Humanist beliefs. The term Atheist is under-inclusive as used to describe Humanists, because Humanists share a common belief system that goes beyond denial of the existence of a god or gods.

44. **Agnosticism.** "Agnosticism" refers to a belief system positing that the existence or non-existence of a god is unknowable.

II. BACKGROUND OF THE U.S. NAVY CHAPLAINCY PROGRAM

A. The Navy's System for Chaplain Recruitment

45. The U.S. Navy Chaplain Corps is established by statute and administered pursuant to regulations prescribed by the Secretary of the Navy. *See* 10 U.S.C. § 5142(a) (1997).

46. Chaplain recruitment is governed by Secretary of the Navy Instruction ("SECNAVINST") 5351.1 and Department of Defense Instruction ("DoDI") 1304.28. SECNAVINST 5351.1 provides that applications for a Navy chaplaincy are reviewed by a Chaplain Appointment and Retention Eligibility Advisory Group ("CARE Board"). The CARE

Board “reviews professional qualifications and forwards a recommendation regarding a [chaplain applicant] to the [U.S. Navy Chief of Chaplains]” SECNAVINST 5351.1. ¶ 5(c). If the CARE Board certifies the applicant’s professional qualifications, the Deputy Chief of Naval Operations, or the Commander, Navy Recruiting Command acting on behalf of the Deputy Chief, makes a determination “whether the applicant is otherwise qualified for a commission as a chaplain.” Chief of Naval Operations Instruction (“OPNAVINST”) 1120.9 ¶ 6.b.2. Under the regulations, “[n]o applicant shall be appointed as a Chaplain Corps officer without these determinations.” *Id.* The Chief of Chaplains “approves or disapproves the recommendation” by the CARE Board “and then forwards it to the [Chief of Naval Personnel],” who makes the final determination as to whether the applicant is accepted or denied. SECNAVINST 5351.1 ¶ 5.c.

47. An applicant for the chaplaincy must also demonstrate that the applicant has received the endorsement of a religious organization by submitting a form DD 2088, which identifies the endorsing organization and evidences the organization’s endorsement of the applicant. *See* DoDI 1304.28 ¶ 6.1 (2014).

48. Department of Defense (“DoD”) and Navy instructions create a two-track system for endorsements submitted by religious organizations. If the applicant’s endorsing organization has previously endorsed an applicant who was accepted, the applicant need file only a single form indicating the ecclesiastical endorsement of his or her religious organization. *Id.* ¶ 6.1.1.1. The Armed Forces Chaplains Board keeps an official list of organizations that receive this preferential treatment. *See* Department of Defense, Office of the Under Secretary for Personnel and Readiness, *Ecclesiastical Endorsing Agents*, <http://prhome.defense.gov/RFM/MPP/AFCB/Endorsements.aspx> (accessed August 6, 2014).

49. If, however, the Navy has *not* accepted a chaplain candidate endorsed by the endorsing organization, the organization must submit additional documentation and obtain the approval of the Armed Forces Chaplains Board (“AFCB”) to become a recognized endorser. *See* DoDI 1304.28 ¶ 6.1.1.2. That documentation must demonstrate that the religious organization:

- “is organized as an entity functioning primarily to perform religious ministries to a non-military lay constituency and currently holds a section 501(c)(3) exempt status . . . as a church for Federal tax purposes from the Internal Revenue Service” DoDI 1304.28 ¶ E3.1.3.1;
- “possesses ecclesiastical authority to grant and withdraw initial and subsequent ecclesiastical endorsement for ministry in the Armed Forces,” *id.* ¶ E3.1.3.2;
- “verifies the religious organization shall provide chaplains who shall function in a pluralistic environment . . . and who shall support directly and indirectly the free exercise of religion by all members of the Military Services, their family members, and other persons authorized to be served by the military chaplaincies” *id.* ¶ E3.1.3.3; and
- “agrees to abide by all DoD Directives, Instructions, and other guidance and with Military Department regulations and policies on the qualification and endorsement of RMPs for service as military chaplains.” *Id.* ¶ E3.1.3.4.

50. A chaplain applicant’s endorsing religious organization must be approved by the AFCB in order for his or her application to be accepted. *See* OPNAVINST 1120.9 ¶ 6.a.6; DoDI 1304.28 ¶ 6.1. A religious organization cannot successfully endorse chaplain applicants without endorsing a candidate who is accepted and obtaining recognition as a qualified religious organization from the AFCB. Accordingly, when a chaplain applicant is endorsed by an organization that is seeking recognition as a qualified endorser for the first time, the success of organization’s application for recognition as a qualified endorser depends on the success of the candidate’s individual application, and the individual applicant’s success depends on his or her endorsing organization obtaining recognition.

B. The Navy and AFCEB's Policy and Practice of Refusing to Recognize Humanism as Religion or Accord it Equal Treatment to other Religions

51. The Navy and DoD have at all times adhered to a policy and practice of not recognizing Humanism as a religion or according it treatment equal to other religions.

52. According to an analysis of official Department of Defense statistics, approximately 23% of service members self-identify as atheist, agnostic, or as having no religious preference at all.¹ Although not all of these service members espouse Humanism, a Humanist chaplain is well equipped to minister to, at a minimum, this portion of the Navy population because Humanists are committed to ecumenism and are not required to advocate belief in a god as a matter of religious doctrine.

53. In addition, 3.6% of the military as a whole specifically identifies as Humanist, which is a larger percentage than any non-Christian denomination, some of which (such as Jewish service members) are represented by chaplains from their denomination, and is equivalent to the representation of some Christian denominations, such as Methodists, who are also represented by chaplains from their denomination. *See Religious Diversity in the U.S. Military*, Military Leadership Diversity Commission (June 2010), *available at* <http://militaryatheists.org/resources/MLDC-RIPSDemographics.pdf>. Several of these self-identified Humanists are enlisted in the Navy and are members of The Humanist Society.

54. The Navy professes to recruit “from a wide variety of sources in furtherance of maintaining a diverse chaplain corps” SECNAVINST 5351.1. ¶ 5.aa. The Navy claims that

¹ 2012 MAAF Department of Defense Religious Preference and Chaplain Support Study, <http://www.militaryatheists.org/resources/MAAF%20DoD%20Demo%202012.xlsx> (accessed January 8, 2014).

“[c]onsideration is given to religious diversity, particularly where a [chaplain candidate’s religious organization] is not currently represented in the [Chaplain Corps], but is represented by Service members in the [Navy].” *Id.* Navy regulations require that “Commanders *shall provide* [religious programs] which accommodate[] the religious needs, preference, and rights of the members of their commands” SECNAVINST 1730.7D § 6.a (August 8, 2008) (emphasis added).

55. Despite the presence of active-duty service members who could be served by a Humanist chaplain, and the Navy’s own regulations requiring accommodation of the religious practices of Navy service members, the Navy has never approved a Humanist as a chaplain. No Humanist organization has been accepted by the Navy or by the Department of Defense as a recognized endorser. The reason for the inconsistency between these regulations and the Navy’s refusal to recognize Humanist chaplains and their endorsing organizations is that the Navy does not consider Humanism to be a religion.

56. Although accepting Humanist chaplains and their endorsing organizations would significantly advance the Navy’s stated policies for chaplain recruitment, Defendant Kibben has admitted that the Navy and DoD do not accept Humanist chaplains because of their Humanist belief and affiliation. Defendant Kibben participated in the International Military Chief of Chaplains Conference from on or about February 3 to on or about February 5, 2015. During the conference, and in the afternoon of February 3, 2015, she was asked the question “why does the United States military not allow Humanists to be chaplains?” Defendant Kibben answered that “Humanist organizations never really demonstrate the benefits of a Humanist Chaplain compared to a Christian Chaplain.” Her statement confirms that an applicant’s Humanist belief and affiliation, by itself, may be the basis for denying him or her a position as chaplain.

57. Defendant Tidd and his subordinates have refused to recognize Humanist candidates as lay leaders because Defendant Tidd, the Navy, and DoD do not recognize Humanism as a religion. Navy regulations permit commanders to appoint “lay leaders” as a “temporary accommodation of specific religious requirements in an operational setting when assigned chaplains are not able to [be] provide[d].” Military Personnel Manual (“MILPERSMAN”) 1730-010 § 1(2006); *see* OPNAVINST § 1730.1E § 5.i. (April 25, 2012). Lay leaders are appointed “on the basis of volunteerism, high moral character, motivation, religious interest, and certification by the appointee’s religious organization.” MILPERSMAN 1730-010 § 2.A. The applicable regulations do not require that the applicant’s endorsing organization be recognized as an official “ecclesiastical endorser” by the AFCB. *See id.*

58. Chief Electronics Technician Douglas Wright volunteered to serve as the Navy’s first Humanist lay leader in or about October 2013. Before Technician Wright made known that he is a Humanist, he was accepted with the group of personnel cleared to receive training as lay leaders by his command. In compliance with MILPERSMAN 1730-010, The Humanist Society submitted a certification of his ability to serve in this capacity.

59. After Technician Wright informed the Navy chaplain responsible for conducting the lay leader training that he is a Humanist, the chaplain refused to allow him to participate in the training and stated that Humanism “does not meet the minimum standards required by the instruction.”

60. Technician Wright requested an explanation through the Navy chain of command as to which aspects of MILPERSMAN 1730-010 (or any other applicable instruction the Navy relied on) his request failed to satisfy. However, in a November 27, 2013 letter signed “by

direction” by Captain Michael J. Parisi, the Executive Assistant to the Chief of Chaplains, on behalf of then-Chief of Chaplains Defendant Tidd, the Navy failed to identify any particular aspect of any instruction, and stated only that “[t]he actions of your commanding officer regarding the operation of the command religious program . . . are consistent with Navy regulations and policy.”

61. On or about October 28, 2014, commanders aboard the Navy vessel USS Makin Island approved Chief Petty Officer Martin Healey as an Atheist Lay Leader. The approval was given by ship-level commanders and did not involve or require the approval of any Defendant. However, when senior Navy Chaplain Corps leadership learned that Officer Healey had been endorsed by an atheist organization, the Navy overruled the ship-level decision and withdrew Officer Healey’s status as a lay leader.

62. Even prior to Plaintiffs’ application to become a Navy chaplain and qualified religious endorser, the Armed Forces Chaplains Board (“AFCB”) acknowledged an increasing demand for recognition among non-theist service members. Minutes of the AFCB meeting held on December 12, 2012 reflect on-going discussions concerning “the way-ahead to address requests for religious support from non-religious groups.” However, the AFCB’s reference to non-theist service members as “non-religious” only confirms the AFCB’s mistaken and discriminatory assumption that Humanists and other non-theists cannot practice religion.

63. DoD policy requires that the Navy and other service branches record data about active duty service personnel in a centralized database. *See* DoDI 1336.05 (May 2, 2001). The DoD and Navy include active duty service members’ religious affiliation among the information stored in the database. *See* Department of Defense Manual (“DoDM”) 1336.05 (July 28, 2009).

DoD policy requires Defendant Wright, in her capacity as Under Secretary of Defense for Personnel and Readiness, to supervise and control DoD reporting of active duty personnel data. *Id.* ¶ 3. For the past three years, Humanist groups have lobbied the DoD, Navy, and AFCB to include Humanism as a recognized religious affiliation. However, Defendant Wright, the DoD, Navy, and AFCB refuse to include Humanism in their recognized lists of religious affiliations.

64. Public comments by Defendant Kibben and her predecessor, Rear Admiral Mark L. Tidd, reveal that belief in a god is not merely an attribute of some religious views in the Navy Chaplain Corps, but, in their view, a *prerequisite* for service as a Navy Chaplain. Defendant Kibben has declared that the chaplaincy is “an extension of God . . . an opportunity to be the witness and the presence of God wherever you go.” Christianne M. Witten, Chief of Navy Chaplains Public Affairs, *Commandant Promotes New Chaplain of the Marine Corps*, The Official Website of the United States Marines, July 28, 2014, *available at* <http://navylive.dodlive.mil/> <http://www.barracks.marines.mil/News>. According to Rear Admiral Tidd, “chaplains embody the reassuring presence of God[.]” Rear Adm. Mark L. Tidd, Chief of Navy Chaplains, *Your Navy Chaplain Corps*, Navy Live, (November 25, 2013), *available at* <http://navylive.dodlive.mil/2013/11/25/your-navy-chaplain-corps-providing-a-ministry-of-presence-for-238-years/>. Defendant Kibben and Rear Admiral Tidd’s bias that Navy chaplains must believe in a divinity is echoed on the Navy Chaplain Corps’ recruitment website, which invites applicants to join in “[s]erving God, country and those who serve.” U.S. Navy, Chaplain & Support, America’s Navy, <http://www.navy.com/careers/chaplain-support.html> (last accessed October 16, 2014).

65. The Navy’s refusal to recognize Humanism as a religion extends even to restrictions imposed by the U.S. Naval Academy on access to the Academy’s Main Chapel,

where the Academy denied a Navy officer's request to hold a Humanist wedding ceremony on the ground that the Main Chapel is unavailable to "non-Christian or non-religious wedding ceremonies." See Brian White, *Group Seeks Humanist Wedding in Naval Academy's Main Chapel*, Marine Corps Times (July 31, 2013, 5:47PM), <http://www.marinecorpstimes.com/article/20130731/NEWS/307310005/Group-seeks-humanist-wedding-Naval-Academy-s-main-chapel> (quoting Naval Academy spokesperson).

66. The Navy and DoD's policy and practice that Humanism is not a religion is shared among other military service branches. The Army recently rejected a Humanist's application to become a "distinctive faith group leader" (the Army equivalent of a "lay leader" in the Navy) because "the request is to foster philosophy and not religion." See Valeria R. Van Dress, *For Man and Country: Atheist Chaplains in the U.S. Army*, Command and General Staff College Foundation (June 13, 2014), <http://www.cgscfoundation.org/wp-content/uploads/2014/06/VanDress-ForManandCountry-AtheistChaplainsintheUSArmy.pdf> (unpublished Master of Military Art and Science, U.S. Army Command and General Staff College) (quoting internal U.S. Army Installation Management Command memorandum). Indeed, a recent study of the Department of Defense's and Army's policies toward Humanists concluded that "[t]he [Department of Defense] and the Army Chaplaincy do not recognize Humanism as religious[.]" *Id.* at 8.

III. THE NAVY DENIES JASON DANIEL HEAP AND THE HUMANIST SOCIETY'S APPLICATION BECAUSE THEY ARE HUMANISTS

A. The Navy Encourages Dr. Heap to Become a Chaplain Before Learning of His Humanist Beliefs

67. Dr. Heap contacted Chaplains Program Officer and Navy Chaplain Lt. Joel DeGraeve in February 2013 to inquire about becoming a chaplain. After reviewing Dr. Heap's

credentials, Lt. DeGraeve told Dr. Heap that Dr. Heap's academic record and international experience make him a highly qualified candidate for a Navy chaplaincy. Lt. DeGraeve encouraged Dr. Heap to apply. As a Chaplains Program Officer and official Navy Chaplain Corps Recruiter, Lt. DeGraeve was authorized to speak for the Navy Chaplain Corps, including Defendants Tidd and Kibben in their capacities as Chief and Deputy Chief of Navy Chaplains, on all matters including recruitment of Dr. Heap.

68. Department of Defense Instruction ("DoDI") 1304.28 requires that an applicant for a Navy chaplaincy receive the endorsement of a religious organization. DoDI 1304.28 ¶ 6. Dr. Heap made it clear to Lt. DeGraeve in their initial discussions that he did not know which religious organization would provide him the endorsement. Lt. DeGraeve told Dr. Heap that his own endorser, the Evangelical Christian Alliance (the "Alliance") would endorse Dr. Heap. Lt. DeGraeve offered to speak with members of the Alliance's endorser board with whom he had connections on Dr. Heap's behalf.

69. At Lt. DeGraeve's suggestion, Dr. Heap began to apply for an endorsement from the Alliance, but concluded that the Alliance did not accurately reflect his religious views. Dr. Heap then requested an endorsement from The Humanist Society, an Internal Revenue Code § 501(c)(3) organization qualified as a church under Internal Revenue Code § 170(b)(1)(A)(i) and formally recognized by the Association of Professional Chaplains as a "faith group."

70. In his application to The Humanist Society, Dr. Heap explained that he sought The Humanist Society's endorsement because of his "practical and professional experience in working with people of varying beliefs—including Humanism, which is now the direction and foundation of my own personal beliefs. My travels around the world have given me insight into

the need for interfaith religious dialogue, and I would hope that this would be beneficial to an organization such as the U.S. Military.”

71. Prior to his consultations with Lt. DeGraeve, Dr. Heap held legal resident status in the United Kingdom. Lt. DeGraeve told Dr. Heap to allow his United Kingdom residency status to expire in order to improve his chances of success as a chaplaincy candidate. Lt. DeGraeve told Dr. Heap that DeGraeve was concerned that more senior officials within the Navy’s hierarchy would confuse “legal residency” with “dual citizenship,” which would constitute grounds for denying Plaintiffs’ application. Dr. Heap followed Lt. DeGraeve’s advice and allowed his U.K. residency to lapse, with the severe immigration and employment ramifications that Dr. Heap may only enter the U.K. as a “visitor” and no longer has access to benefits such as employment insurance or health care under the U.K. National Health Service.

72. At the request of Navy recruiter Lt. Mark Howell, Dr. Heap collected documents, including a Certificate of his license to serve as a Minister from the First Baptist Church in LaGrange, Texas, and sent them to Lt. Howell.

73. In June 2013, Dr. Heap was serving as Director of Studies at an English language academy in China. Following additional suggestions from Lt. DeGraeve, Dr. Heap traveled at his own expense from China to Philadelphia, Pennsylvania in order to continue the chaplaincy application process. Dr. Heap paid out of his own pocket for private medical examinations and passed medical exams required by DoDI 1304.28.

74. While in Philadelphia, Dr. Heap interviewed with U.S. Marine Chaplain (Lt. Commander, Retired) Rabbi Reuben Israel Abraham. Rabbi Abraham gave Dr. Heap a perfect ranking in his assessment of Dr. Heap’s qualifications to serve as chaplain.

75. Dr. Heap then travelled at his own expense to meet Lt. DeGraeve in Harrisburg, Pennsylvania. Lt. DeGraeve again told Dr. Heap that Dr. Heap was highly qualified to serve as a Navy chaplain. Lt. DeGraeve told Dr. Heap that he would attempt to “fast-track” the application so that Dr. Heap could appear before a Chaplain Appointment and Retention Eligibility Board (“CARE Board”) the following month, in July 2013, or August 2013 at the latest.

76. As of June 2013, Dr. Heap had submitted all paperwork required by the DoD and U.S. Navy except for the paperwork identifying his endorsing religious organization. *See* DoDI ¶ 1304.28 6.1.1.1-2. Dr. Heap also submitted a Form SF 86 security clearance application. In June, when Lt. DeGraeve offered Dr. Heap the opportunity to “fast-track” his appearance before a July 2013 CARE Board, and Rabbi Abraham gave Dr. Heap a perfect ranking of his qualifications to serve as chaplain, they and the Defendants had not yet learned that Dr. Heap would be endorsed by The Humanist Society.

B. The Navy and AFCB Discover Dr. Heap and The Humanist Society’s Humanist Beliefs and Reject Their Application Because They Are Humanists

77. The Navy and Armed Forces Chaplains Board Defendants learned that Dr. Heap is a Humanist for the first time on July 3, 2013, when the AFCB received administrative paperwork identifying The Humanist Society as Dr. Heap’s endorsing organization.

78. DoD Instructions require the AFCB to “accept the required documents” from an organization seeking recognition as an ecclesiastical endorser “only when the applicable Military Department has determined” that the candidate was otherwise qualified. DoDI 1304.28 6.1.1.3. Although DoDI 1304.28 ¶ 6.1.1.4 permits the “Military Departments” to evaluate chaplain candidates whose religious organizations have not been recognized by the AFCB, nothing in

6.1.1.4 permits the AFCB to accept the religious organization's administrative paperwork before the Military Department has made a determination that the individual candidate is qualified.

79. The AFCB accepted The Humanist Society's administrative paperwork on July 3, 2013. However, as of July 3, 2013, no CARE Board had been convened by the Navy as to Dr. Heap, nor had the Navy made any formal determination as to Dr. Heap's qualifications to serve as chaplain. The AFCB's acceptance of The Humanist Society's administrative paperwork before the Navy made any determination as to Dr. Heap's candidacy violated DoDI 1304.28 ¶ 6.1.1.3.

80. The Navy Defendants required AFCB recognition of The Humanist Society as a prerequisite for the Navy approving Dr. Heap as a chaplain candidate. On or about the time the AFCB received Dr. Heap's administrative paperwork identifying The Humanist Society as Dr. Heap's endorsing organization, an internal memorandum was circulated to Navy Chaplain Corps officials and the AFCB. The memorandum stated that Dr. Heap had received the endorsement of The Humanist Society, and that The Humanist Society "at this time, has not been given Ecclesiastical Endorser status" by the DoD. The memorandum also stated that an individual applicant to the Navy Chaplaincy must "have an endorsement" from a religious organization recognized by the AFCB before the chaplain's application "is complete to submit, or it cannot be forwarded for final review or approval." In addition, the memorandum stated that the Navy "do[es] not accept candidates *nor process applications* that do not meet the full requirements to become a chaplain" including that the applicant "must be endorsed by a Religious Organization registered with the DoD."

81. As alleged below, the Navy Defendants also considered the fact that The Humanist Society is a Humanist organization acting as Dr. Heap's endorsing organization and based their decision to deny Plaintiffs' application in part on the fact that Dr. Heap was endorsed by The Humanist Society.

82. After the Navy and DoD Defendants learned that Dr. Heap is a Humanist from his endorsement by the Humanist Society, each of these Defendants applied to Dr. Heap and The Humanist Society's application the Navy and DoD's non-recognition of Humanism as religion by stalling the processing of, and ultimately denying, their application. The Navy and DoD Defendants applied this policy and practice to Dr. Heap and The Humanist Society because they are Humanists.

83. Lt. DeGraeve contacted Dr. Heap in late July 2013 and told him that being endorsed by The Humanist Society rather than the Evangelical Christian Alliance could pose a problem for his application.

84. Despite Lt. DeGraeve's offer to expedite Plaintiffs' application and Dr. Heap's appearance before the July 2013 CARE Board, the Navy Defendants did not invite Dr. Heap to appear before a CARE Board in the summer of 2013, or any time in 2013. Contrary to these initial promises to expedite Plaintiffs' application, the processing of Plaintiffs' application stalled after the AFCB accepted The Humanist Society's endorsement.

85. Soon after Plaintiffs submitted their application, political pressure mounted on the Department of Defense and Defendants Mabus and Tidd to deny the application. Twenty-one members of Congress submitted a letter to Defendant Secretary of Defense Chuck Hagel, with copies to Defendants Secretary of the Navy Ray Mabus and Chief of Navy Chaplains Rear

Admiral Mark L. Tidd, “to express [their] concern that the Department of Defense . . . is processing applications for a humanist endorsing agent and humanist chaplain,” specifically referencing “Jason Heap’s application to the Navy to serve as a humanist chaplain.” The signatories included four members of the House Armed Services Committee’s Seapower and Expeditionary Forces Subcommittee. The Seapower and Expeditionary Forces Subcommittee has authority and responsibility for oversight of the United States Navy and Marine Corps. Both the Chairman, J. Randy Forbes, and the Ranking Member, Mike McIntyre, of the Seapower and Expeditionary Forces Subcommittee signed the letter.

86. The American Center for Law and Justice submitted a similar letter to Secretary Hagel describing Dr. Heap as “non-religious” and opposing his candidacy. U.S. Representative John Fleming introduced legislation in the U.S. House of Representatives to prevent the Department of Defense from accepting Humanist chaplains, claiming that “[t]he notion of an atheist chaplain is nonsensical; it’s an oxymoron[.]” FoxNews.Com, *Religious Scholar Who Doesn’t Believe in God Wants to Become Navy Chaplain* (July 30, 2013).

87. Controversy erupted in the media, with media outlets reporting in both television and print that an “atheist” had applied to become a chaplain.

88. Dr. Heap wrote to Lt. Howell on July 12, 2013, telling him that “I am now very worried that assembling the documentation for my application is taking so long, especially since it has been 3 weeks since I interviewed with Rabbi Abraham and almost 2 weeks since I sent [other application documents.] Could you please reassure me that my kit will be completed and forwarded by the end of today/Friday, in order for me to appear before the next [CARE Board] meeting[?]”

89. Around the same time, a representative of The Humanist Society contacted Defendant Tidd and offered to discuss Plaintiffs' application. Defendant Tidd responded through a subordinate that "[w]hile I understand your desire to discuss your organization and to incorporate humanists into the Navy Chaplain Corps," the Rear Admiral "respectfully declines" The Humanist Society's meeting request. Subsequent attempts by The Humanist Society to meet with Navy recruitment personnel and discuss Plaintiffs' candidacy were met with similar rejections.

90. Defendants Tidd, Kibben, and Horn, along with Captain Parisi, personally investigated and scrutinized Dr. Heap's religious convictions after learning that Dr. Heap was endorsed by The Humanist Society. On July 29, 2013, a subordinate in the Chief of Chaplains office wrote to Defendants Tidd, Kibben, Horn, and Captain Parisi, informing them of a news article in which Dr. Heap "clearly identifies himself as Humanist and provides his argument for service in the Chaplain Corps." Defendant Kibben responded that she "look[ed] forward to seeing the hard copy" of this article.

91. A subordinate officer wrote to Defendant Tidd on August 19, 2013, reporting that he had "received a little intelligence on the humanist so called [sic] applicant to our Corps." Instead of reprimanding his subordinate for his obvious bias against Dr. Heap by referring to him as a "humanist so called applicant," Tidd thanked the officer for his work. The officer reported he was unable to find evidence that Dr. Heap had been an ordained minister of the Disciples of Christ; however, Dr. Heap had never claimed to be an ordained minister of that denomination.

92. Dr. Heap continued trying to obtain information on the status of the application from his Navy recruitment officers. Lt. DeGraeve informed Dr. Heap that the application

remained under “administrative review” and that he had “nothing more to pass on.” A new Navy Chaplain recruiter, Father Lt. Benton Garrett, became responsible for the application but was similarly unable or unwilling to give him any information other than that “[t]here is still no definitive timeline.” After receiving unanimous encouragement from Lt. DeGraeve and other Navy representatives up until the moment Dr. Heap’s Humanist religious views became known through his endorsement by The Humanist Society, Dr. Heap and The Humanist Society continually requested but were unable to obtain any meaningful update on the status of the application from July 2013 until late-March 2014.

93. Meanwhile, Defendants Tidd, Kibben, and Captain Parisi continued to directly investigate and scrutinize Dr. Heap’s religious beliefs through the fall of 2013. Because the Navy and DoD adhere to a policy and practice not to recognize Humanism as a religion or accord it equal status to other religions, Parisi and other Navy personnel conducted a “Humanist Applicant Course of Action Meeting” in December 2013 to coordinate the Navy’s response to Plaintiffs’ application. Neither the Defendants nor their subordinates made Dr. Heap or The Humanist Society aware of the attention given to Plaintiffs’ application by Navy officials; instead, Lt. Benton Garrett, Dr. Heap’s chaplain recruiter, continued to claim misleadingly that the application was simply “under administrative review.”

94. The Humanist Society continued to request meetings with Defendants Tidd, Kibben, and other Navy Chaplain Corps officers through February 2014. Subordinates forwarded each of these requests to Parisi, who continued to monitor and coordinate the Navy’s response. No Navy or AFCB representative agreed to meet with The Humanist Society.

95. After months of delay and deflection by Navy recruitment officials, The Humanist Society and legal counsel for the American Humanist Association sent a letter asking the Navy for an update on the status of Plaintiffs' application in February 2014. Parisi received the letter and forwarded it to Defendants Tidd and Kibben, assuring them that he would "start staffing a reply." Only in response to the letter from legal counsel, on March 28, 2014, did the Navy invite Dr. Heap to appear for a CARE Board on April 8, 2014 in Washington, D.C. Given the short notice and extensive travel required, Dr. Heap agreed to appear at the May 13, 2014 CARE Board meeting.

96. Days before Dr. Heap appeared for the CARE Board meeting, the Chaplain Corps' Director of Policy and Strategy wrote to an officer in the Chaplain Corps' Office Legislative Affairs and Notified him that "the humanist applicant for appointment in the [Chaplain Corps] is due for review Will advise you on the outcome when we can." In response, the officer from the Office of Legislative Affairs reminded the Director of Policy and Strategy that Plaintiffs' application "has a lot of interest regarding religious accommodation on the Hill." The Chaplain Corps' Office of Legislative Affairs is responsible for congressional oversight of the Chaplain Corps, including oversight by the U.S. House Armed Services Committee and the Seapower and Expeditionary Forces Subcommittee.

97. Dr. Heap appeared at a CARE Board meeting on May 13, 2014 at the Pentagon.

98. On May 27, Lt. DeGraeve contacted Dr. Heap and told him that his application had been denied. Dr. Heap requested a written denial stating reasons for the decision, and received a letter signed by Captain Diana Meehan rejecting his application. The May 27 letter stated it was sent "by direction of the Commander." The letter provided no reason for the denial.

99. Navy and DoD regulations do not require or provide any procedure for notifying an organization seeking recognition as a qualified ecclesiastical endorser that it has been rejected.

100. DoDI 1304.28 requires that the CARE Board make an initial recommendation on applicants for the chaplaincy and that the CARE Board's recommendation be forwarded to the Chief of Chaplains. In the case of Plaintiffs' application, however, that procedure was reversed. After personally scrutinizing the content of Dr. Heap's religious beliefs, Defendant Tidd became personally involved in and influenced the CARE Board's recommendation as to Dr. Heap's candidacy. The Assistant Community Manager for the Chaplain Corps sent a letter dated May 28, 2014 to the Chaplain Corps Program Manager, stating that Dr. Heap "has not been recommended by the CARE Advisory Group for Commissioning in the Chaplain Corps" "[p]er reference (a)." "Reference (a)" referred to in the letter is a May 23, 2014 letter from Defendant Tidd to Defendant Andrews. Rather than being generated independently by the CARE Board itself, the CARE Board's recommendation was formulated "per," or "according to," the letter from Defendant Tidd.

101. On June 17, 2014, a reporter for the Navy Times asked The Special Assistant for Communications in the Chief of Chaplains office "whether a humanist designation could have hampered [Dr. Heap's] chances" to become a chaplain. In response, the Special Assistant for Communications in the Chief of Chaplains office admitted to the reporter that the reason Dr. Heap and The Humanist Society's application was denied was that Dr. Heap did not "represent[] a religious organization by any accepted definition."

IV. JASON DANIEL HEAP AND THE HUMANIST SOCIETY MEET ALL NAVY AND DOD QUALIFICATIONS

102. Jason Daniel Heap meets the standards prescribed by the Navy, DoD, and the Chief of Chaplains, for acceptance into the Chaplain Corps. *See* DoDI 1304.28 (June 11, 2004); OPNAVINST 1120.9 (December 20, 2005); COCINST 1110.1H (May 8, 2007). Indeed, according to one Christian chaplain endorser whose religious organization has been recognized by the AFCB, “[m]y group has over 100 military chaplains and Heap is as good as 99 of them.”²

A. The Humanist Society, Dr. Heap’s Endorsing Organization, Meets all Navy and DoD Requirements for an Endorsing Religious Organization

103. Department of Defense and Navy instructions require a chaplain applicant to demonstrate that he or she has received the endorsement of a “qualified religious organization.” DoDI 1304.28 ¶ 6.1; *see also* COCINST 1110.1H ¶ 5.a. The applicant must demonstrate this endorsement by submitting a DD Form 2088, “Statement of Ecclesiastical Endorsement.” *Id.*

104. Dr. Heap received the endorsement of The Humanist Society, a § 501(c)(3) organization qualified as a church under Internal Revenue Code § 170(b)(1)(A)(i). Founded in 1939, The Humanist Society prepares Humanist Celebrants to lead ceremonial observances, including weddings and funerals, across the nation and worldwide, and aims to strengthen Humanist communities. The Humanist Society provided the Navy with its endorsement of Jason Heap and administrative documentation meeting the requirements of DoDI 1304.28 on July 2, 2013.

² Tom Carpenter, *Navy Chaplains Obstruct Religious Liberty*, The Blog (June 16, 2014, 3:04 pm), http://www.huffingtonpost.com/tom-carpenter/navy-chaplains-obstruct-r_b_5497103.html.

105. In particular, the administrative documentation submitted by The Humanist Society demonstrated that:

- The Humanist Society is a § 501(c)(3) tax-exempt organization qualified as a church under § 170(b)(1)(A) of the Internal Revenue Code;
- The Humanist Society possesses ecclesiastical authority as a Humanist church to grant and withdraw ecclesiastical endorsement;
- The Humanist Society verified that its chaplains will function in a pluralistic environment and will support the free exercise of religion by service members, their families, and all authorized persons; and
- The Humanist Society stated its agreement to adhere to “all DoD Directives, Instructions, and other guidance and with Military Department regulations and policies on the qualification and endorsement of RMPs for service as military chaplains.” DoDI 1304.28 ¶ E3.1.3.4.

B. Dr. Heap’s Qualifications Satisfied All Navy and DoD Criteria, the Position He Applied For Remained Open After He Was Rejected, and Defendants Later Accepted Candidates With Similar Qualifications Who Were Not Humanists

106. Dr. Heap satisfies all applicable Navy and DoD criteria for chaplain applicants. After Dr. Heap was rejected, the position he applied for remained open. In the three months following its denial of Plaintiffs’ application, Defendants accepted at least two non-Humanist candidates who had similar qualifications under the Navy and DoD criteria.

1. Educational Qualifications

107. DoD directives require chaplains to be “educationally qualified,” meaning that they have received a bachelor’s degree and post-bachelor’s degree of more than 72 credit hours “in the field of theological or related studies.” DoDI 1304.28 ¶ 6.1.4. COCINST 1110.1H similarly instructs the CARE Board to consider “[a]cademic credentials, as evidenced by graduate and undergraduate transcripts in view of the requirements for professional development and career progression,” as well as “[d]emonstrated potential for further graduate studies, as

evidenced by cumulative Grade Point Average in graduate level studies[.]” COCINST 1110.1H

¶¶ 5.b, 5.f.

108. Dr. Heap obtained a Bachelor of Arts, double majoring in Philosophy and Practical Theology (GPA 3.16), from Howard Payne University in Brownwood, Texas; a Master of Divinity in Counselling and Religion from Brite Divinity School—Texas Christian University (GPA 3.173); and a Master of Studies from The University of Oxford in Ecclesiastical History, awarded by the Faculty of Theology.

109. Dr. Heap also obtained a Post-Graduate Certificate in Education with a teacher’s specialization in teaching Religious Education to students aged eleven to eighteen from Sheffield Hallam University. The Post-Graduate Certificate prepared him to work as a Teacher of Religious Education in the U.K.’s school system. Dr. Heap’s resume also noted that he was completing his Ed.D. in Administrator Leadership for Teaching and Learning in an online program through Walden University in Minneapolis, Minnesota, in which he held a GPA of 4.0, and his membership in three academic honors societies. Dr. Heap has since obtained his Ed.D, graduating with a GPA of 4.0.

110. On June 11, 2014, the Navy accepted a candidate (“Candidate A”) who had a Bachelor of Social Work from Saginaw Valley State University (GPA 3.0695), a Master of Arts from Denver Seminary (GPA 2.78), and no other post-baccalaureate education.

111. On August 15, 2014, the Navy accepted another candidate (“Candidate B”) who had a Bachelor of Arts (GPA 2.95) from Southern Adventist University and a Master of Divinity (GPA 3.02) from Andrews University. Candidate B had no other post-baccalaureate education.

2. Willingness and Ability to Support the Free Exercise of Religion in a Pluralistic Environment

112. DoD instructions require that chaplains must be “willing to function in a pluralistic environment . . . and willing to support directly and indirectly the free exercise of religion” by service members and their families. DoDI 1304.28 ¶ 6.1.2. The instructions define a “pluralistic environment” as one in which “a plurality of religious traditions exist side-by-side” DoDI 1304.28 ¶ E.2.1.8. In addition, the instructions require that the applicant have 2 years of religious leadership experience that is “compatible with the duties of the [applicant] in their respective religious organization and relevant to the settings of the military chaplaincy.” *Id.* 6.1.3. Chief of Chaplains Instruction 1110.1H similarly instructs the CARE Board to evaluate an applicant’s “[d]emonstrated ability to constructively provide ministry and accommodation in a pluralistic environment.” COCINST 1110.1H ¶ 5.h.

113. Plaintiffs’ application detailed Dr. Heap’s career in ministry, which began at the First Baptist Church in LaGrange, Texas, where he led missionary work and became a licensed minister in 1993. The application demonstrated that Dr. Heap led weekly worship services through music and liturgy, regularly delivered sermons for the church, and led in the Memorial Supper at the First United Methodist Church in Crowley, Texas. While in Texas, Dr. Heap regularly volunteered with the interfaith chaplaincy program at Dallas/Fort Worth International Airport under the supervision of the Rev. Col. John H. Williams (Ret. U.S. Air Force). Dr. Heap also officiated numerous weddings and funerals, one with full military honors at the National Cemetery in Dallas for a Navy veteran of World War II.

114. Dr. Heap continued his ministry while teaching and pursuing his education outside the United States. After completing his degrees at The University of Oxford and

Sheffield Hallam University in the United Kingdom, Dr. Heap taught religious education, philosophy, and ethics classes in the United Kingdom and led Easter and Christmas services for the Matthew Humberstone Church of England School. As Head of Religious studies at another U.K. school, Dr. Heap coordinated with local religious leaders from Sikh, Muslim, Rastafarian, and Christian communities to provide religious support for students. Dr. Heap relocated to Kuwait in 2008 to become Headteacher at Cambridge English School, where he taught Christian ethics classes to Coptic and Protestant Christians and facilitated communications with local Shi'ite and Sunni Muslim Imams. In 2010, Dr. Heap relocated to Nigeria to become Director of Studies at The Capital Science Academy in Abuja, where Dr. Heap counseled Christian and Muslim students on religious issues and assisted the school's Imam with preparation for Muslim holy events while teaching classes in Christian theology with the school's Pastor.

115. The application also demonstrated that Dr. Heap has officiated at weddings and funerals, performed baptisms, led hospital visitations, counseling sessions, and Bible studies classes, and has performed Communion services on more than forty separate occasions.

116. Dr. Heap's DD Form 2088 also discusses his extensive experience serving in pluralistic environments, including international professional experience and experience ministering in schools, hospitals, and churches, including Baptist and Methodist churches.

117. By requiring that the candidate's religious leadership "be compatible with the duties of [religious leaders] in their respective religious organization[s]," DoDI 1304.28 requires the Defendants to defer to endorsing organizations'—including The Humanist Society's—concept of what constitutes religious ministry and leadership within their own traditions. The Humanist Society recognizes and accepts Dr. Heap's experience as ministry within the Humanist

tradition. On the Form DD 2088, The Humanist Society certified that Dr. Heap has four years of professional experience recognized by The Humanist Society as Humanist religious leadership.

118. Candidate A's DD Form 2088 also indicated 4 years of ministry experience. Neither Candidate A's DD Form 2088 nor the letter from his endorsing organization indicates his willingness to serve in pluralistic environments.

119. Candidate B's DD Form 2088 indicated 6 years of ministry experience, but also does not address Candidate B's willingness to serve in pluralistic environments.

3. Additional Criteria

120. DoD and Navy directives also require chaplains to meet prescribed physical standards, affirm they will abide by all applicable laws and instructions of the DoD and the Navy, be able to complete 20 years of active service by age 68, be of good moral character and unquestioned loyalty to the United States, and exhibit a strong motivation to serve as a Navy Chaplain. *See* DoDI 1304.28 ¶ 6.4; OPNAVINST 1120.9 ¶¶ 1-4; COCINST 1110.1H ¶¶ 5.k, 5.l, 5.i. The Chief of Chaplains also instructs the CARE Board to consider whether the applicant possesses "[the] ability to manage multiple tasks and the potential to develop pastoral, religious ministry, and staff officer skills relevant to chaplaincy service;" "verbal, written, and problem solving skills;" "leadership and team working skills;" an "ability or potential to excel in a military environment, [which] may be evidence by . . . significant work experience;" and "professional reputation and comportment." COCINST 1110.1H ¶¶ 5.d, 5.e, 5.g, 5.j, 5.m.

121. Plaintiffs' application presented that Dr. Heap was capable of completing all required physical standards, including swimming, running, and weight-lifting ability. At the time of the application, Dr. Heap was 37 years old, and therefore able to complete 20 years of active

service by age 60. The application further reflected that he had no police record, no history of drug abuse or activity, and no history of financial mismanagement such as bankruptcy or delinquency on debt.

122. As detailed above, Plaintiffs' application also evidenced Dr. Heap's significant work experience, including extensive ministry experience, leadership experience, team working experience, and speaking, writing, and problem solving experience.

123. Candidate B's Form 2088 describes credentials similar to Dr. Heap's, including "experience and skills that have prepared him for serving as a military chaplain" and summarizes his employment history, which includes being "Dean of Pastoral Care and Programming of over 400 young adult males," and "associate pastor of liturgy and worship in 1,200 member church in Ohio."

124. At the time of the May 13, 2014 CARE Advisory Group , there were 4 chaplain positions available in Active Duty components.

125. Dr. Heap was an Active Component applicant for direct accession.

126. Only three Active Component applicants were selected from the May 13, 2014 CARE Board. Dr. Heap was not among them.

127. After the May 13, 2014 CARE Board, the fourth position remained open.

128. Dr. Heap has long felt, and continues to feel, a strong calling to serve as a military chaplain. He began planning for a career in the chaplaincy during his time at Brite Divinity School. An opportunity to study at Oxford temporarily suspended these plans, but returning to

the U.S. and joining the military as a chaplain has remained one of Dr. Heap's lifelong ambitions.

V. THE HUMANISM PRACTICED BY JASON DANIEL HEAP AND THE HUMANIST SOCIETY CONSTITUTES RELIGION

129. The Humanism practiced by Jason Daniel Heap and The Humanist Society constitutes religion within the meaning of the Religious Freedom Restoration Act and the United States Constitution.

A. Humanism Addresses Fundamental and Ultimate Questions of Life

130. Humanism, as articulated in *Humanism and its Aspirations*, addresses fundamental questions undertaken by traditionally recognized religions. According to one authoritative Humanist publication endorsed by The Humanist Society, Humanism “shares much with the philosophies and religions of the East as well as of the West.” Lloyd & Mary Morain, *Humanism as the Next Step*, ch. 1 (American Humanist Association, 2007).

131. Humanism takes a definitive position on the relationship between nature and mankind. Humanism posits that “Humans are an integral part of nature, the result of unguided evolutionary change.” Manifesto III. It “recognize[s] nature as self-existing” rather than as serving human ends or coordinated by a single intelligence and “accept[s] our life as all and enough” without relying upon the promise of reward or punishment in an afterlife. *Id.*

132. Humanism also seeks to identify the source of human knowledge. It propounds that “[k]nowledge of the world is derived by observation, experimentation, and rational analysis,” and contends that “science is the best method for determining this knowledge.” *Id.*

133. Humanism identifies a system of rules for ethical conduct. It argues that “[e]thical values are derived from human need and interest as tested by experience.” *Id.* These ethical values include an overriding interest in preserving “human welfare shaped by human circumstances, interests, and concerns and extended to the global ecosystem and beyond.” *Id.*

134. Like many traditions recognized as religious in mainstream American culture, Humanism emphasizes the inherent value of human life as a central imperative. Humanism recognizes “each person as having inherent worth and dignity” Manifesto III. In honor and recognition of the inherent dignity of all persons, Humanists undertake a fundamental commitment “to minimize the inequities of circumstance and inability . . . so that as many as possible can enjoy a good life.” *Id.*

135. In addition, Humanism takes a position on the source of human satisfaction. It asserts that “[h]umans are social by nature and find meaning in relationships.” Human satisfaction therefore derives in part from the “joining of individuality with interdependence” among autonomous individuals. *Id.* Humanism also “rel[ies] on the rich heritage of human culture,” rather than supernatural inspiration, to provide direction and fulfillment. *Id.*

136. As explained by Unitarian Minister and Humanist John H. Dietrich,

[H]umanism thinks of religion as something very different and far deeper than any belief in God. To it, religion is not the attempt to establish right relations with a supernatural being, but rather the upreaching and aspiring impulse in a human life. It is life striving for its completest fulfillment, and anything which contributes to this fulfillment is religious, whether it be associated with the idea of a God or not.

Morain, *supra* § VI.111.A.

137. For Humanists such as Jason Heap and The Humanist Society, this commitment to celebration and improvement of human life fulfills a role equivalent to belief in divinity in conventional religion.

138. Dr. Heap and The Humanist Society adhere to the values and fundamental principles advocated by Humanism sincerely and with the strength of traditional religious views.

B. Humanism is a Comprehensive Worldview as Opposed to an Isolated Teaching

139. Humanism offers a comprehensive system of ethical and moral principles as opposed to an isolated teaching. As attempts to state systematically a set of interrelated and mutually reinforcing beliefs, *Humanism and its Aspirations* and *Humanism as the Next Step*, both publications endorsed by The Humanist Society, demonstrate that Humanism is a comprehensive worldview.

140. The Humanism practiced by Jason Daniel Heap and The Humanist Society incorporates principles of religious traditions that are themselves comprehensive belief systems. Ethical Culture, Unitarianism, and Universalism are closely related to and inform the Humanism practiced by Plaintiffs. Plaintiffs' Humanism merges these religious traditions with eighteenth century enlightenment rationalism and nineteenth century "freethought" that do not describe themselves as religious but nevertheless constitute systematically presented principles and beliefs.

C. Humanism Exhibits the Hallmarks and External Signs of Religion

141. Humanism includes customs and practices that occupy a parallel position in Humanist thought to rituals performed in other religious traditions.

1. Ceremony

142. The Humanist Society prepares Humanist Celebrants to lead ceremonial observances including weddings and memorial services, give invocations, and lead celebrations and commemorative events in accordance with Humanist thought and teaching. As a Celebrant, Dr. Heap is accredited by The Humanist Society to perform these ceremonies.

143. Humanists conduct regular meetings in forums including Ethical Culture societies, Sunday Assemblies, and Free Thought Churches, among others. For example, the Northern Virginia Ethical Society is a humanist congregation that conducts a Sunday School and regular Sunday meetings and “promotes ethical growth and learning, builds and sustains community and implements ethical action” Northern Virginia Ethical Society, www.noves.org (accessed September 12, 2014). Similarly, The Fellowship of Humanity in Oakland, California, is a Humanist Church that conducts Sunday meetings involving a group reading and singing of songs, meditation, and a collection.

144. Humanist meetings sometimes may involve discussions of Humanist thought and ideas, and at other times may involve community service projects that give Humanists the opportunity to practice their belief that “[w]orking to benefit society maximizes individual happiness” and commitment to “minimize the inequities of circumstances and ability . . . so that as many as possible can enjoy a good life.” Manifesto III, *supra* § II.38.

2. Holidays

145. Many Humanists also observe annual holidays that provide opportunities to observe and practice their beliefs. “HumanLight” and “World Humanist Day” are Humanist holidays that are observed on December 23 and June 21 of each year, respectively, as

celebrations of Humanist values. Many Humanists also celebrate other holidays including Freethought Day, a holiday that celebrates individual identity and personhood, and National Day of Reason, which is devoted to celebrating rational thinking and freedom from government intrusion into religious matters.

3. Recognized Ministry and Organizational Structure

146. The Humanist Society endorses Humanist Celebrants to become advocates, leaders, and scholars of Humanism. Celebrants perform functions equivalent to the roles of ministers and clergy in other religious traditions.

147. Each level of Celebrant endorsement is associated with completing prescribed courses and areas of study. The Humanist Society provides an accredited program of training and free online education through the Kocchar Online Humanist Education website, and a related Certificate Program providing in-person training through The Humanist Institute.

148. The Associate Humanist Celebrant credential is an introductory credential that confers rights equivalent to ordained clergy, including wedding solemnization.

149. The Humanist Celebrant credential is The Humanist Society's endorsement to serve as a congregational leader to Humanist congregations, officiant at all Humanist ceremonies, and scholar of Humanism. The credential requires the Celebrant to renew his or her credential bi-annually by submitting an application for approval to The Humanist Society.

150. A Senior Humanist Celebrant is intended to act as a mentor and teacher to other Humanist Celebrants. Humanist Celebrants may apply to become Senior Celebrants on the date of their first bi-annual re-endorsement. To qualify for the position, a candidate must have two

years in good standing as a Humanist Celebrant. To maintain the credential, a Senior Celebrant must conduct at least one ceremony and have four hours of Humanism-related formal education per year.

151. The Humanist Celebrant Leader designation is provided to Celebrants who have successfully taken on an organizational leadership role as a Humanist. The Humanist Society encourages local Humanist congregations to make qualification as a Celebrant Leader a requirement for leaders within their organizations. To qualify, an applicant must be endorsed as a Senior Humanist Celebrant, obtain reference from an organization in which the applicant is a leader, and complete an application with three references, among other requirements. To maintain the credential, a Celebrant Leader must maintain standing as a Senior Celebrant, maintain a leadership position within his or her organization, complete four hours annually of formal group leadership training, and file a bi-annual re-endorsement application, among other requirements.

152. Recognition as a Humanist Celebrant Emeritus is awarded to retired Humanist Celebrants in recognition of their years of service and status as exemplary Celebrants. Like other Celebrants, the title of Humanist Celebrant Emeritus carries full credentials and benefits equivalent to ordained clergy.

153. As part of its mission to provide support for Humanists in the Armed Services, The Humanist Society also provides the endorsement of Humanist Lay Leader. This position is available for military personnel desiring to organize humanist meetings within chaplain services in accordance with various military regulations. In addition, and as part of the same mission, The Humanist Society provides the endorsement of Humanist Chaplain. This credential is designed to

prepare candidates to serve as chaplains in institutional settings such as prisons, hospitals, and in the military. The Board of Chaplaincy Certification, Inc., an affiliate of the Association of Professional Chaplains (“APC”), formally recognizes The Humanist Society as a “faith group” qualified to endorse chaplains and for its chaplains to seek APC certification.

154. Humanist Celebrants are permitted to perform marriages under state statutory provisions that apply to religious ministers or clergy in virtually all of the fifty States and the District of Columbia. By granting Humanist Celebrants permission to solemnize marriages under these statutory provisions, these States recognize Celebrants as a form of minister or clergy.

155. As a Celebrant endorsed by The Humanist Society, Dr. Heap may perform marriages in all fifty states and the District of Columbia.

4. Important Writings

156. The Humanist Society endorses several writings as authoritative statements of Humanism.

157. *Humanism and its Aspirations* articulates a consensus among modern Humanists as to what they believe. It was adopted in 2003 and is the third revision of the Humanist Manifesto.

158. The Humanist Manifesto was first adopted in 1933, and was again revised in 1973. Like *Humanism and its Aspirations*, the original and revised versions of the Manifesto set forth a consensus view of beliefs espoused by contemporary Humanists.

159. *Humanism as the Next Step* is another contemporary expression of the beliefs of modern Humanism. See Morain, *supra* § VI.111.A. Like *Humanism and its Aspirations*,

Humanism as the Next Step is also endorsed by The Humanist Society as a contemporary expression of Humanist beliefs.

5. Propagation of Beliefs

160. Humanists disseminate their beliefs through numerous print and on-line media. The Humanist Press publishes both print and electronic books that reflect Humanist thought. *The Humanist* is an online and print magazine published by The Humanist Society. Humanists also routinely use on-line social media to disseminate ideas and coordinate Humanist meetings.

161. Humanists practice their commitment “to minimize the inequities of circumstances and inability” and belief that “[w]orking to benefit society maximizes individual happiness” by engaging in community service projects and trips. Manifesto III. Humanist congregations often partner with congregations from conventionally recognized religious organizations to perform these community services.

VI. DISCRIMINATION AGAINST HUMANIST CHAPLAIN APPLICANTS AND THEIR ENDORSING AGENCIES SERVES NO RATIONAL GOVERNMENTAL PURPOSE

162. Excluding Dr. Heap from the chaplaincy because he is a Humanist serves no rational governmental purpose and, indeed, contradicts the stated goals and purposes of the Navy chaplaincy.

163. The Navy claims to recruit “from a wide variety of sources in furtherance of maintaining a diverse corps made up of the best and most fully qualified chaplains.” *Id.* ¶ 5(a). “Consideration is given” in recruitment “to religious diversity, particularly where an [applicant’s religious organization] is not currently represented in the [Chaplain Corps], but is represented by Service members in the [Navy].” *Id.* Navy regulations purport to require that “Commanders *shall*

provide [religious programming] which accommodates the religious needs, preferences, and rights of the members of their commands” SECNAVINST 1730.7D § 6.a (emphasis added).

164. Excluding Dr. Heap from the Chaplain Corps and The Humanist Society from the Department of Defense’s approved list of ecclesiastical endorsing agencies contradicts these policies. Humanists serve in the Navy, Coast Guard, and Marines, yet there is *no* Humanist chaplain in any of the Armed Services. Humanist chaplains also would be well-equipped to serve—at a minimum— service members who have no religious preference and make up approximately 23% of the military according to DoD statistics. *Supra* pt. III.B. The Navy and AFCB Defendants denial of Plaintiffs’ application contradicts the Navy’s regulations requiring its commanders to accommodate the religious needs of their subordinates. As the Navy also refuses to recognize Humanist lay leaders, it cannot claim to be meeting these religious needs through some means other than the chaplaincy.

165. Refusing to admit a Humanist into the Navy Chaplain Corps or recognize The Humanist Society as a qualified endorser of chaplains undermines morale and military unit cohesion by denying Humanist service members access to chaplains who share, or at least understand, their beliefs. As one Humanist veteran of the Vietnam War describes his experiences,

I knew that proclaiming to be an atheist while on duty in South Vietnam could likely prejudice promotions and possibly cause harmful reprisals. An atheist was perceived as tantamount to being a communist. Our army chaplain was a fundamentalist Christian who saw the devil in virtually everything he didn’t believe in. Army chaplains wielded a lot of power; their opinions could make the difference between whether or not you got promoted. So, I was quiet about my nonbelief in God.

Philip K. Paulson, *I Was an Atheist in a Foxhole*, American Humanist Ass’n (1989), http://americanhumanist.org/humanism/I_Was_an_Atheist_in_a_Foxhole.

166. The Navy also requires Chaplains to “be willing to function in the diverse and pluralistic environment of the military, with tolerance for diverse religious traditions and respect for the rights of individuals to determine their own religious convictions.” SECNAVINST 1730.7D (2008) ¶ 5.d.e.2. “Chaplains must be willing to support the free exercise of religion by all Service members, their families, and other authorized persons.” *Id.* Excluding Dr. Heap from the Chaplain Corps and the Humanist Society from the Navy’s approved list of ecclesiastical endorsing agencies contradicts these policies as well, because Dr. Heap’s and The Humanist Society’s Humanist principles *emphasize* tolerance and respect for differing religious traditions.

167. As a certified Humanist Celebrant, Dr. Heap is qualified to organize and lead Humanist ceremonies. Dr. Heap has served as minister for Christian churches in Texas, and counseled students on the practice of other religious traditions as a teacher and coordinator of religious studies. Dr. Heap’s professional background demonstrates his willingness and ability to support and encourage a wide variety of religious traditions. *See supra* V.B.

168. That Dr. Heap does not believe in a god or gods does not prevent him from ministering to Navy service members who do. Like other Humanists, Dr. Heap is committed to protecting religious freedom and observance as part of his commitment “to diversity[] and [to] respect those of differing yet humane views.” Manifesto III.

169. The Armed Forces Chaplains Board has recognized the Buddhist Churches of America, which practices Shin Buddhism, as a qualified ecclesiastical endorsing agent.

170. The Navy has commissioned at least one Shin Buddhist chaplain.

171. Like Humanism, Shin Buddhism does not teach or profess belief in a personal or centralized god.

172. The AFCB has recognized a Zen Buddhist organization as a qualified religious endorser.

173. The AFCB also has recognized a Hindu organization that espouses a belief in more than one god as a qualified religious endorser.

174. The AFCB also recognizes The Unitarian Universalist Association (“UUA”) as a qualified religious endorser.

175. Humanist chaplains serve in the militaries of Belgium and the Netherlands. Thirty-eight out of a total one-hundred fifty chaplains in the Dutch military are Humanists.

176. U.S. universities also sponsor Humanist chaplains. *See, e.g.*, Humanist Community at Harvard, *Greg M. Epstein*, <http://www.harvardhumanist.org/greg-epstein/> (accessed September 10, 2014) (Harvard University); Alex Richard, *Stanford’s New Humanist Chaplain: John Figdor*, *The Stanford Review* (March 10, 2013), *available at* <http://www.stanfordreview.org/article/stanfords-new-humanist-chaplain-john-figdor/> (Stanford University); American University, Washington D.C., Kay Spiritual Life Center, *Binyamin Biber*, <http://www.american.edu/ocl/kay/humanist-chaplain.cfm> (American University) (accessed September 10, 2014).

177. Humanists serve as chaplains in hospitals throughout the United States. Humanists also serve as chaplains in hospice care settings in the United States. In these settings, Humanist chaplains provide chaplain support for both theist and non-theist patients.

178. As Humanist chaplains in U.S. academic institutions , hospitals, and hospice care settings, and in the Dutch and Belgian militaries, are capable of ministering to students and service members who believe in a god or gods, there is no rational reason why Dr. Heap and The Humanist Society's Humanist convictions would prevent them from providing chaplain support to U.S. Navy service members of all faiths.

179. The Forum on the Military Chaplaincy ("the Forum") has published a public statement in support of allowing Humanists to serve as military chaplains. As of August 2014, the statement had been signed by over 120 representatives of different faiths and denominations, including Christianity and Judaism. *See* The Forum on the Military Chaplaincy, *Humanist Chaplain Support Statement of Principle* (August 2014), *available at* <http://forumonthemilitarychaplaincy.org/wp-content/uploads/2013/08/statement-of-principle-signed.pdf>.

180. The Forum's signed public statement demonstrates that adherents of theistic religions do not perceive Humanists' non-theist beliefs as disqualifying them from the chaplaincy or preventing them from fulfilling their duties to service members who believe in a god or gods.

181. Humanists' disbelief in the existence of a god or gods does not supply a rational basis for excluding them or their endorsing organizations from the Navy chaplaincy.

182. Denying Jason Daniel Heap a chaplaincy because he is a Humanist, and denying The Humanist Society status as an approved endorsing agency because of its Humanist convictions, undermines the constitutional foundations of the military chaplaincy itself. As recognized in *Katcoff v. Marsh*, the military chaplaincy's ability to survive scrutiny under the

Establishment Clause depends upon its inclusiveness of all religious persuasions. *See* 755 F.2d at 231 (“The Army chaplaincy does not seek to ‘establish’ a religion” because “[i]t observes the basic prohibition expressed by the Court in *Zorach v. Clauson* 343 U.S. 306, 314 (1952) [that] ‘the government must be neutral when it comes to competition between sects.’” (internal citations omitted)). Permitting the Navy to pursue a policy of excluding chaplain applicants because of their religious persuasion would compromise this predicate for the chaplaincy’s constitutionality.

VII. DR. HEAP EXHAUSTS AVAILABLE ADMINISTRATIVE REMEDIES

183. The Navy notified Dr. Heap of its decision to reject him on May 27, 2014.

184. Navy and DoD regulations do not require or provide any procedure for notifying an organization seeking recognition as a qualified ecclesiastical endorser that it has been rejected.

A. Dr. Heap Exhausts Title VII Remedies and is Informed by the Navy EEO That Title VII “Does Not Apply”

185. On June 10, 2014, Plaintiff Heap, through counsel, contacted the Navy Office of EEO and Diversity Management (“Navy EEO”), seeking to initiate the pre-complaint counseling procedure for claims brought under Title VII of the Civil Rights Act of 1964 (“Title VII”). *See* 29 C.F.R. § 1614.105.

186. The Navy EEO conducted its final interview with Dr. Heap on July 16, 2014 and issued a “Notice of Further Rights” to Dr. Heap. The “Notice of Further Rights” stated that Dr. Heap had until August 1, 2014, to file a formal complaint of discrimination.

187. Dr. Heap filed a formal complaint of discrimination on July 31, 2014. Dr. Heap's formal complaint of discrimination "challenge[d] the Navy's rejection of" the application "because of [Dr. Heap's] religious beliefs."

188. On September 3, 2014, Dr. Heap received a Notice of Dismissal of Formal Complaint from the Chief of Naval Personnel. The Notice of Dismissal stated that "[t]hough 29 C.F.R. § 1614 applies to military departments including Department of Navy, it does not apply to uniformed members of the military departments. As the EEOC has no enforcement power or jurisdiction over appointments to uniformed positions of the military departments, your issue fails to state a claim for which there is a remedy under the EEOC." The Notice of Dismissal further stated that "you may file a civil action in an appropriate U.S. District Court within 90 calendar days of your receipt of this decision. Filing a civil action will result in termination of the administrative processing of your complaint."

189. As Dr. Heap received the Notice of Dismissal on September 3, 2014, his Complaint had to be filed no later than December 2, 2014 to allege a claim under Title VII.

190. The Navy chaplaincy is a uniformed military position.

191. Title VII does not apply to uniformed service members or to applicants to serve in a uniformed military position.

B. Because Dr. Heap Never Became a Member of the U.S. Navy, the Navy's Records Correction Procedures Do Not Apply

192. The procedures described at 10 U.S.C. § 1558 apply *only* to actions seeking to correct military records. *See* 10 U.S.C. § 1558(a). Dr. Heap does not seek correction of an error in any military record.

193. Dr. Heap does not have any military records covered by 10 U.S.C. § 1558.

194. The Navy has not established any procedure for correction of military records for individuals who never became service members or employees of the Navy. The Board for Correction of Naval Records (“BCNR”) has jurisdiction to determine “the existence of error or injustice in the naval records *of current and former members of the Navy and Marine Corps.*” 32 C.F.R. 723.2 (emphasis added). It has no jurisdiction over any military records maintained by the Navy for persons who never became Navy service members or employees.

195. A person seeking to correct an error in his military records must submit an application to the BCNR on Form DD 149. 32 C.F.R. 723.3(a). Form DD 149 requires the applicant to present information that is inapplicable to individuals who never became service members or employees of the Navy, such as listing the person’s Branch of Service, Service Number, Pay Grade, Date of Discharge, Type of Discharge, and Present Status as either “Active Duty, Reserve, National Guard, Retired, Discharged, or Deceased.” DD 149 has no alternative sections that would allow a person who never became a Navy service member or employee to present information in support of his or her application.

196. Counsel for Dr. Heap contacted the Navy BCNR at the telephone number provided on its website on September 19, 2014. The BCNR representative informed counsel that the BCNR’s procedures do not apply to persons who applied for a position with the Navy and never became Navy service members or employees because such persons have no military records.

197. Because Dr. Heap's claim is not for correction of military records, and because the Navy has not established any administrative procedure available to him under 10 U.S.C. § 1558, use of the Navy's record-correction procedures would be futile.

VIII. COMPLAINT OF DISCRIMINATION

198. The Navy and AFCB Defendants discriminated against Jason Daniel Heap and The Humanist Society as his endorsing religious organization by denying their application to serve as a Navy Chaplain and qualified ecclesiastical endorser because Plaintiffs are Humanists. All Defendants made this determination by applying to Dr. Heap and The Humanist Society a Navy and DoD policy and practice of not recognizing Humanism as religion or according it equal treatment to other religions.

199. The Humanist Society has standing in its organizational capacity. In the near future The Humanist Society plans to endorse and is willing to serve as the endorsing entity for qualified Humanist chaplains. So long as the Navy continues its policy of refusing to recognize The Humanist Society as an AFCB approved religious organization The Humanist Society will not be able to successfully sponsor candidates who can be accepted by the Navy into the chaplaincy and is subject to additional burdens imposed on first-time endorsers. The Humanist Society has identified other individuals whom it intends to endorse as Humanist candidates for the Navy chaplaincy. For example, Specialist Joseph Farkas is a Master of Divinity candidate at the University of the West in Rosemead, California, and member of the California National Guard. The Humanist Society intends to endorse and submit an application by Specialist Farkas in December 2017, to serve as Navy chaplain, after Specialist Farkas completes his Divinity degree and the two years of religious leadership experience. However, as a result of the Navy and AFCB Defendants' discriminatory denial of Dr. Heap and The Humanist Society's

application, The Humanist Society has not achieved recognition as an endorser and cannot successfully sponsor candidates for the chaplaincy. Moreover, as long as the Navy Defendants and AFCB Defendants are able to persist in their unfounded and discriminatory policy of excluding Humanists from the chaplaincy, The Humanist Society will be unable to obtain recognition as an endorser. The Humanist Society also remains subject to the more onerous and expensive requirements imposed by the Navy on religious organizations that have not previously endorsed a successful chaplain applicant. *See* DoDI 1304.28 ¶ 6.1.1.2. Denying the Humanist Society recognition because of its Humanist views materially impairs The Humanist Society's performance of its mission to provide chaplains to the military, because The Humanist Society cannot provide chaplains to the military without receiving recognition from the AFCB. Further, subjecting The Humanist Society to the more rigorous review process for an endorsing organization that has not received recognition materially impairs the Society's organizational mission to provide Humanist Celebrants to Humanist communities, including Humanist service members in the Navy, and requires the Society to take steps and expend resources not required of other recognized endorsers. Denying The Humanist Society recognition because of its Humanist views materially impairs The Humanist Society, because the Society cannot provide chaplains to the military without receiving recognition from the AFCB, and, as a consequence, The Humanist Society cannot effectively serve its members in the Navy.

200. Because of the discriminatory rejection of Dr. Heap, The Humanist Society will now face the DoD's more onerous and expensive requirements that apply to religious organizations that have not previously endorsed a successful chaplain applicant. *See* DoDI 1304.28 ¶ 6.1.1.2. These more onerous and expensive requirements would not apply to The Humanist Society if Plaintiffs' application had been successful. Further, subjecting The

Humanist Society to the more rigorous review process for an endorsing organization that has not received recognition materially impairs the Society's organizational mission to provide Humanist Celebrants to Humanist communities, including Humanist service members in the Navy, and requires the Society to take steps and expend resources not required of recognized endorsers.

201. Because of the Navy and AFCB Defendants' refusal to recognize The Humanist Society as an AFCB approved religious organization and rejection of Dr. Heap because of their Humanist convictions, The Humanist Society's mission to provide Humanist Celebrants and support and education about Humanist beliefs to its community has been frustrated. In fact, before filing the original Complaint in this action, the Humanist Society was compelled to devote significant resources to identify and counteract the Navy's religious discrimination practices, including by spending at least 100 hours of its staff's time and a significant amount of out-of-pocket expenses to (A) investigate and identify Defendants' discriminatory policy against The Humanist Society and (B) engage in efforts to combat and counteract Defendants' discriminatory policy through education and outreach to public officials, members of communities of faith, and members of the Armed Forces. For example, after investigating the Navy's discriminatory policy and before filing the original Complaint, the Humanist Society sponsored a congressional briefing with the American Humanist Association to educate members of Congress about the rejection of Plaintiffs' application and the need for Humanist chaplains in the military, and conducted substantial outreach to the media to inform the public about the Navy's and DoD's refusal to accept The Humanist Society and a Humanist chaplain. The Humanist Society spent at least 100 hours of staff time on the congressional briefing and conducting related meetings with members of Congress. That time could otherwise have been spent lobbying Congress on legislation regarding employment non-discrimination, education scholarships, and parochial

school vouchers. That time also could have been spent on creating new chapters across the country, working with Celebrants and lay leaders, certifying new Celebrants and interviewing Celebrant candidates, reviewing and processing applications by Celebrant candidates, designing a new website for The Humanist Society, designing a new curriculum for in-person Celebrant trainings, and other activities in furtherance of The Society's organizational mission.

202. So long as the Navy's and DoD's discriminatory policy persists, The Humanist Society will be compelled to continue to engage in the same burdensome efforts to identify and counteract this discriminatory policy, and The Humanist Society's injury will consequently grow.

203. The Humanist Society also has standing in its organizational capacity because the Navy and AFCB Defendants' discrimination against The Humanist Society caused the denial of Dr. Heap and The Humanist Society's application. The Navy Defendants considered The Humanist Society's endorsement of Dr. Heap together with the rest of the application, and, in violation of their own regulations, required AFCB recognition of The Humanist Society as a prerequisite for approving Dr. Heap as a chaplain candidate. Accordingly, the AFCB's refusal to recognize The Humanist Society as an approved religious organization contributed to the rejection of both Dr. Heap and The Humanist Society as chaplain candidate and endorsing organization. Moreover, The Humanist Society was injured in its organizational capacity because rejection of Dr. Heap was based in part on his endorsement by The Humanist Society, and rejecting Dr. Heap would have precluded consideration of The Humanist Society by the AFCB even if Defendants had followed their regulation.

204. The Humanist Society also has associational standing. Because of the Navy and AFCB Defendants' discriminatory denial of Plaintiffs' application, Humanist service members in the Navy do not have access to a Humanist chaplain able to conduct ceremonies and provide counseling in accordance with their Humanist convictions. Among the 3.6% of members of the Armed Services who are Humanists and serving in the Navy are: Petty Officer Todd Kregel, Commander Antonio MacCabe, and Chief Electronics Technician Douglas Wright. Technician Wright is also a member of The Humanist Society. Petty Officer Kregel, Commander MacCabe, and Technician Wright all are part of the community of Humanists within the military that The Humanist Society seeks to serve as an integral part of its organizational mission. As a result of the Navy Defendants and AFCB Defendants' rejection of Dr. Heap and The Humanist Society and ongoing refusal to recognize the Humanist Society as an Ecclesiastical Endorser, none of these Navy personnel has access to a Humanist Chaplain who understands their views and is capable of facilitating their observance of Humanism.

205. Categorically denying access to a Humanist chaplain by Officer Kregel, Commander MacCabe, Technician Wright, and other Humanist Navy service members impairs their practice and observance of Humanism. For example, Theist Navy chaplains tend to provide counseling from the perspective of their own religious denomination. Humanist service members, in contrast, have an interest in receiving counseling in a moral and ethical language that Humanists understand and adhere to. A Humanist service member who needs consultation and support from a chaplain about the death of a family member is not helped by being told by a Theist chaplain that the family member is now "with God." Because Theist chaplains are trained by their denominations to provide such counseling, they are often unable to understand that Humanist service members are not comforted or aided in the observance of Humanism by these

assurances. A Humanist chaplain, by contrast, could provide consultation about death according to his or her training as a Humanist Celebrant, using a language and belief system that Humanists understand and share. Consultation with chaplains as opposed to other resources that might be available is especially important because these consultations are designated by the Navy and DoD as confidential and privileged. *See* SECNAVINST 1730.9 (Feb. 7, 2008). Further, Celebrants who would be Humanist chaplains, unlike psychologists (for example), are trained in the tenets of Humanism.

206. Further, lack of access to a Humanist chaplain deprives Humanist service members of a voice and advocate for their beliefs and their community within the Navy chain of command. Lack of access to a Humanist chaplain deprives Humanists of community support through collective meetings, similar to Sunday church services in other traditions, where they could identify themselves as Humanists, form a community, and meet and discuss the tenets of their beliefs. Without these meetings Humanists lack guidance, lack community, and are left to fend for themselves. Lack of access to a Humanist chaplain also deprives these service members of access to Humanist literature that a Humanist chaplain would otherwise provide. Further, lack of access to a Humanist chaplain deprives Humanist service members of chaplains who can officiate at ceremonies such as funerals, weddings, retirements, and baptisms in a manner that is consistent with their beliefs. Humanists seeking to use existing Navy chaplains for these purposes must attempt to convince a Theist chaplain to officiate in a non-theist manner, which Theist chaplains are not always willing or able to do because of restrictions imposed by their ecclesiastical endorsing organization, or because they are simply unable to understand how these services are performed in a non-Theist community. Theist chaplains have refused to facilitate

Humanist observance when requested by Humanists because they claim that Humanism is not a religion.

207. Even in situations where a Humanist chaplain is not immediately available, categorically barring Humanists from the chaplaincy impairs Officer Kregel, Commander MacCabe, Technician Wright, and other Humanists' observance of Humanism. For example, if a Humanist chaplain were allowed in the military, the chaplain could create referral systems whereby service members could be referred to Humanist Celebrants and other Humanist clergy-equivalents in an off-base location. The Navy Chaplain Corps provides such referrals to non-military clergy of other religious traditions where chaplains of a specific denomination are not available, but does not do so for Humanists. In addition, even if a Humanist chaplain were not immediately available, a Humanist chaplain could coordinate with other chaplains to ensure that Humanist literature is available, or could counsel other chaplains on how to facilitate Humanists' observance of Humanism without imposing Theist or other non-Humanist beliefs on Humanist service members seeking chaplain assistance. Further, if Humanist service members were admitted to the chaplaincy and allowed to conduct activities designed to foster a Humanist community, even in instances where a Humanist chaplain might not be immediately available, a Humanist service member seeking support would at least have access to an identified community of Humanists who could help facilitate his or her observance of Humanism. And at the very least, if a Humanist chaplain were admitted to the Navy Chaplaincy, even in instances where he or she was not immediately available, the chaplain could be contacted remotely by Humanist service members for guidance and support.

208. Officer Kregel, Commander MacCabe, Technician Wright, and other Humanist service members' lack of access is not based solely on the unavailability of a Humanist Chaplain

in the particular location where they serve; instead, these service members are denied access to a Humanist Chaplain categorically and everywhere they serve by the Navy and AFCEB Defendants because of their Humanist convictions. Categorically denying Humanists access to a chaplain because of their beliefs imposes a stigma on these service members by communicating a message that Humanists are less worthy of chaplain care and recognition than adherents of other traditions. By granting the relief sought in this Amended Complaint, namely the hiring of Dr. Heap and the recognition of The Humanist Society as a qualified endorsing organization, the injuries of these and other Humanist service members will be redressed, as such Humanist service members will finally have access to a Humanist Chaplain who understands their views and can facilitate their observance of Humanism. The individual participation of the three Humanists identified above in this lawsuit, however, is not necessary because the relief will be the same as to all of them—all will be relieved from being categorically barred from receiving chaplain support from a Humanist Chaplain. The Humanist Society has standing to sue on behalf of its members, like Technician Wright, and service members who, like Officer Kregel, Commander MacCabe, and Technician Wright, are part of the community it serves in furtherance of its organizational mission to strengthen Humanist communities and provide access to Humanist Celebrants within the military.

209. Dr. Heap and The Humanist Society demand a jury trial of all claims so triable.

COUNT ONE

(Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq.)

210. Plaintiffs incorporate by reference and reallege all foregoing paragraphs herein.

211. This Count is alleged by Jason Daniel Heap and The Humanist Society against Defendants Mabus, Hagel, Scott, the Navy, the Department of Defense, and John and Jane Does # 21-30 in their official capacities, against Defendants Moran, Stendahl, Gard, Andrews, Kibben, Garfola Wright, Rutherford, Bailey, Page, and the CARE Board Defendants in their individual and official capacities, and against Defendants Horn, Tidd and John and Jane Does # 31-40 in their individual capacities.

212. The Religious Freedom Restoration Act (“RFRA”), codified at 42 U.S.C. § 2000bb *et seq.*, provides that the federal government “shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability,” unless the government demonstrates that the burden “is in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering” that interest. 42 U.S.C. § 2000bb-1(a)-(b).

213. Defendants’ rejection of Plaintiffs’ application to serve as a Navy chaplain and endorsing organization substantially burdens Dr. Heap’s exercise of his Humanist religion by discriminating against him on the basis of his religious exercise, belief, and affiliation. Denial of Dr. Heap’s application denies him access to a forum for observance, discussion, and practice of religion with Navy service members because of his Humanist affiliation while Defendants allow adherents of other belief systems to access this forum. Further, the Navy and Department of Defense’s refusal to recognize Humanism as a religion requires Dr. Heap to choose between seeking the endorsement of an organization that does not share his religious beliefs—as when Lt. DeGraeve suggested he become endorsed by the Evangelical Christian Alliance—or to forego becoming a Navy chaplain.

214. Defendants' rejection of Plaintiffs' application substantially burdens The Humanist Society's exercise of its Humanist convictions by discriminating against The Humanist Society on the basis of its Humanist affiliation. The Humanist Society must continue to seek recognition from the AFCB before it can endorse candidates for the Navy chaplaincy and cannot carry out its mission to provide Humanist Chaplains to Humanists in the Navy. Further, as long as the AFCB Defendants and Navy Defendants are permitted to reject The Humanist Society and candidates endorsed by The Humanist Society because of their Humanist beliefs, The Humanist Society will never be able to provide Humanists in the Navy with a Humanist chaplain. Because of the AFCB Defendants' refusal to recognize The Humanist Society because of its Humanism, The Humanist Society must either profess different beliefs or forego its mission to provide Humanist Chaplains to Humanists in the Armed Forces.

215. Defendants' denial of Plaintiffs' application because of their Humanist affiliations substantially burdens the religious exercise of Humanist service members in the Navy by categorically denying them access to a chaplain who shares and understands their ethical and moral beliefs and practices. Humanists in the Navy must either seek counsel from chaplains who do not understand their views, and who sometimes denigrate or proselytize them and their views, or continue serving in the military without access to chaplain support. Humanist service members have no chance of meeting or counseling with a Humanist Chaplain because Humanist Chaplains do not exist in the Navy or anywhere in the military as a matter of DoD and Navy policy. Humanist service members' religious exercise is also burdened indirectly by the lack of any Humanist representative within the chaplaincy who can advocate to commanders and Navy and DoD leadership on issues of concern as to the Humanist community, such as the lack of counseling from Humanist chaplains, the problem of proselytization of Humanists by non-

Humanist chaplains, and the lack of understanding or acceptance of Humanism as a system of belief in the Navy. *See supra* ¶¶ 204-08.

216. Defendants bear the burden to show that a government-imposed deterrent to religious exercise furthers a compelling state interest and is the least restrictive means of furthering that interest.

217. Excluding Jason Heap and The Humanist Society from the Navy Chaplaincy and its recruitment system because they are Humanists contradicts the Navy's stated goals and policies for recruitment of Navy chaplains. Humanists are as able to serve Navy service members of disparate faiths as chaplains from other religions that the Navy and AFCB Defendants have accepted. Excluding Plaintiffs on the basis of their religious view serves no compelling interest.

218. Excluding Plaintiffs from the chaplaincy is not the "least restrictive" means of advancing any compelling governmental interest.

COUNT TWO

(Establishment Clause, U.S. Const. amend. I, cl. 1)

219. Plaintiffs incorporate by reference and reallege all foregoing paragraphs herein.

220. This Count is alleged by Jason Daniel Heap and The Humanist Society against all Defendants other than Defendants Horn, Tidd and John and Jane Does # 31-40 in their official capacities.

221. The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend ., cl. 1. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially

preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). Strict scrutiny applies to governmental action that imposes a preference among religious denominations. *Id.* at 246.

222. The Navy Defendants and AFCB Defendants discriminated against Dr. Heap and The Humanist Society by denying, recommending, and/or approving the denial of Plaintiffs’ application because of their Humanist convictions.

223. The Navy Defendants’ and AFCB Defendants’ rejection of Dr. Heap’s and The Humanist Society’s applications imposes an unconstitutional denominational preference by disqualifying applicants on the basis of their religious affiliation. It is therefore subject to strict scrutiny, and Defendants bear the burden to prove the rejection of both is justified by a compelling interest and narrowly tailored to further that interest.

224. The Navy Defendants’ and AFCB Defendants’ rejection of Plaintiffs’ applications because of Plaintiffs’ Humanist religious views also fails the three-part test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1982). Under *Lemon*, governmental action violates the Establishment Clause if it has no secular purpose, if its “principal or primary effect . . . [either] advances [or] inhibits religion,” or it causes “excessive government entanglement with religion.” *See Lemon*, 403 U.S. at 612-13 (internal quotation marks omitted).

225. Rejecting Plaintiffs’ applications because of their Humanist religious affiliation serves no valid secular purpose. As more than 3% of military personnel identify as Humanist, and the Navy has never accepted a Humanist chaplain, the disqualification of Humanist applicants contradicts the Navy’s stated policies to recruit “from a wide variety of sources in furtherance of maintaining a diverse corps made up of the best and most fully qualified chaplains,[]” and to seek to recruit applicants whose religious organization “is not currently

represented in the [Chaplain Corps], but is represented by Service members in the [Navy].” *See* SECNAVINST 5351.1 ¶ 5.a.

226. Rejecting Plaintiffs’ applications because of their Humanist religious affiliation has the unconstitutional primary effect of advancing a particular view of religion that requires the existence and centrality of a god or gods, and of inhibiting the religious practices of Humanist Navy service members who are denied access to a Humanist chaplain. These effects are evidenced by the reactions of opponents of Plaintiffs’ application, who applauded the Navy’s decision as a rejection of Plaintiffs’ religious views. *See, e.g.,* Press Release, Chaplain Alliance for Religious Liberty, *Chaplains commend Navy for decision on “atheist chaplain” application* (May 30, 2014), *available at* www.chaplainalliance.org (“Chaplains, historically and by definition, are people of faith. . . . You can’t have an ‘atheist chaplain’ any more than you can have a ‘tiny giant’ or a ‘poor millionaire.’” (quoting Ron Crews Executive Director of Chaplain Alliance for Religious Liberty)); Todd Starnes, Fox News Radio, *Navy Rejects ‘Humanist’ Chaplain*, *available at* <http://radio.foxnews.com/toddstarnes/top-stories/navy-rejects-humanist-chaplain.html> (accessed August 18, 2014) (quoting comments by U.S. Representative John Fleming that “[b]y definition, if you are a person who is not a believer in God, that automatically disqualifies you”).

227. Rejecting Plaintiffs’ applications because of Plaintiffs’ Humanist religious affiliation excessively entangles the Navy and AFCEB in religious matters by involving them in choosing which of multiple competing traditions are sufficiently “religious” to qualify for a chaplaincy.

COUNT THREE

(Free Exercise Clause, U.S. Const. amend. I, cl. 2)

228. Plaintiffs incorporate by reference and re-allege all foregoing paragraphs herein.

229. This Count is alleged by Jason Daniel Heap and The Humanist Society against all Defendants other than Defendants Horn, Tidd and John and Jane Does # 31-40 in their official capacities.

230. The Free Exercise Clause of the First Amendment provides that “Congress shall make no law . . . prohibiting the free exercise” of religion. U.S. Const. amend. I, cl. 2. The Free Exercise Clause applies to government action that discriminates among some or all religious beliefs.

231. The Navy Defendants’ and AFCEB Defendants’ rejection of Dr. Heap’s and The Humanist Society’s application impermissibly singles out Dr. Heap and The Humanist Society for disfavored treatment because of their Humanist convictions. Discrimination against Plaintiffs because of their religious convictions is invalid unless Defendants demonstrate that it is justified by a compelling interest and is narrowly tailored to advance that interest.

232. Defendants’ denial of Plaintiffs’ application denies Dr. Heap access to a forum for observance, discussion, and practice of religion with Navy service members because of his Humanist affiliation while the Navy allows adherents of other belief systems to access this forum. Further, the Navy’s failure to recognize Humanism as a religion requires Dr. Heap to choose between seeking the endorsement of an organization that does not share his religious beliefs—as when Lt. DeGraeve suggested he become endorsed by the Evangelical Christian Alliance—or to forego becoming a Navy chaplain. Denial of Dr. Heap candidacy to become

chaplain because of the content of his religious beliefs burdens Dr. Heap's religious exercise by preventing him from sharing the tenets of Humanism with Navy service members, sponsoring and participating in Humanist ceremonies with service members, and, in accordance with the purposes of the Navy chaplaincy, fostering the free exercise and understanding of Humanism and religion by service members.

233. Defendants' denial of Plaintiffs' application substantially burdens The Humanist Society's exercise of its Humanist convictions by discriminating against The Humanist Society on the basis of its Humanist affiliation. The Humanist Society must continue to seek recognition from the AFCB before it can endorse candidates for the Navy chaplaincy and cannot carry out its mission to provide Humanist Chaplains to Humanists desiring guidance and counseling, including those in the Navy. Further, as long as the Defendants are permitted to reject The Humanist Society and candidates endorsed by The Humanist Society because of their Humanist beliefs, The Humanist Society will never be able to freely exercise its Humanist convictions by providing Humanists in the Navy with a Humanist chaplain. As long as Defendants' discriminatory policy of refusing to accept Humanist applicants exists, The Humanist Society must choose between professing different beliefs or forego its mission to provide Humanist Chaplains to Humanists in the Armed Forces.

234. The Navy Defendants' and AFCB Defendants' rejection of Dr. Heap's and The Humanist Society's application substantially burdens the religious exercise of Humanist service members in the Navy by categorically denying them access to a chaplain who shares and understands their ethical and moral beliefs and practices. Unlike service members of religious denominations that are recognized by the AFCB Defendants and admitted to the Navy chaplaincy by the Navy Defendants, Humanist service members have no chance of meeting or

counseling with a Humanist Chaplain because Humanist Chaplains do not exist in the Navy or anywhere in the military as a matter of DoD and Navy policy. Humanist service members' religious exercise is also burdened by the lack of any Humanist representative within the chaplaincy who can advocate to commanders and Navy and DoD leadership on issues of concern as to the Humanist community, such as the lack of counseling from Humanist chaplains, proselytization of Humanists by non-Humanist chaplains, and the lack of understanding or acceptance of Humanism as a system of belief in the Navy. *See supra* ¶¶ 204-08.

COUNT FOUR

(Equal Protection and Substantive Due Process, U.S. Const. amend. XIV, § 1 & amend. V)

235. Plaintiffs incorporate by reference and reallege all foregoing paragraphs herein.

236. This Count is alleged by Jason Daniel Heap and The Humanist Society against all Defendants other than Defendants Horn, Tidd and John and Jane Does # 31-40 in their official capacities.

237. Under the Fifth and Fourteenth Amendments to the U.S. Constitution, the federal government may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Under the Fifth Amendment, the federal government may not deprive any person of “liberty . . . without due process of law.” U.S. Const. amend. V.

238. Governmental action that discriminates between similarly situated individuals on the basis of their religion is subject to strict scrutiny under the Equal Protection Clause. In addition, because Defendants' rejection of Plaintiffs' application and refusal interferes with their fundamental rights to free exercise of religion, it receives strict scrutiny under both the Equal Protection and Due Process Clauses.

239. Plaintiff Jason Daniel Heap is similarly situated to chaplain applicants from non-Humanist religious backgrounds whose chaplaincy applications were approved by the Navy Defendants.

240. Plaintiff Heap demonstrated that he satisfies all applicable requirements imposed by Navy and Department of Defense instructions. *See* DoDI 1304.28; OPNAVINST 1120.9; *supra* pt. IV. Nevertheless, the Navy Defendants denied Plaintiffs' application because of Dr. Heap's Humanist convictions.

241. The Humanist Society provided documentation to the AFCB on July 2, 2013, demonstrating that it satisfies all requirements imposed by DoDI 1304.28. *Supra* IV.A. Because The Humanist Society has met all of these requirements, The Humanist Society is similarly situated to religious endorsing organizations that have been approved as qualified endorsers by the AFCB Defendants. Nevertheless, Defendants denied Plaintiffs' application because of The Humanist Society's Humanist convictions.

242. Humanists in the Navy are situated similarly to service members from other ethical, moral, and religious traditions whose religious affiliations are reflected in the Navy Chaplain Corps. However, as a matter of policy and practice, the Navy denies Humanists in the Navy access to a Humanist Chaplain because they are Humanists.

COUNT FIVE

(Religious Test Clause, U.S. Const. art. VI, ¶ 3)

243. Plaintiffs incorporate by reference and reallege all foregoing paragraphs herein.

244. This Count is alleged by Jason Daniel Heap and The Humanist Society against all Defendants other than Defendants Horn, Tidd and John and Jane Does # 31-40 in their official capacities.

245. The Religious Test Clause states that “no religious test shall ever be required as a qualification of any office or public trust under the United States.” U.S. Const. art. VI, ¶ 3. The Clause prohibits the federal government from conditioning receipt of any federal office or public trust on adherence to any particular religion or to religion in general or on belief in the existence of a god.

246. Navy regulations require an applicant to attest to his affiliation with a qualified religious endorsing organization as part of his application to serve as a Navy chaplain. The application form for commission as a Navy chaplain provided by Defendants requires an applicant to “certify that all statements made in this application and any additional statements pertaining thereto are entirely true and complete to the best of my knowledge and belief.” Because the procedure imposed in DoDI 1304.28 necessarily requires an attestation of affiliation with a religious endorser, that procedure imposes an unconstitutional religious test as a prerequisite for federal office as a chaplain.

247. Even if it were permissible for the Navy to require the endorsement of a recognized religious organization, DoDI 1304.28 is also unconstitutional as applied to Dr. Heap. By denying Dr. Heap a position as a U.S. Navy chaplain and refusing to recognize The Humanist Society as a qualified religious organization because of their Humanist convictions, Defendants violated the Religious Test Clause by making belief in a Navy-approved religion a prerequisite for federal office.

248. By denying Dr. Heap a chaplaincy because the Navy does not recognize Humanism as a religion or accord Humanism equal treatment to other religions, the Defendants impose a requirement of a specific religious affiliation as a prerequisite for public office. Likewise, by denying Jason Daniel Heap a chaplaincy because the Navy does not recognize The Humanist Society as a qualified religious endorsing organization, the Defendants impose a requirement of religious affiliation as a prerequisite for public office.

COUNT SIX

(Subject Matter and Viewpoint Discrimination, Prior Restraint, and Freedom of Association: U.S. Const. amend. 1, cl. 3)

249. Plaintiffs incorporate by reference and reallege all foregoing paragraphs herein.

250. This Count is alleged by Jason Daniel Heap and The Humanist Society against all Defendants other than Defendants Horn, Tidd and John and Jane Does # 31-40 in their official capacities.

251. Under the Free Speech Clause, Defendants may not “abridge[] the freedom of speech.” U.S. Const. amend. 1, cl. 3. The Free Speech Clause prohibits Defendants from regulating and/or prohibiting Dr. Heap and The Humanist Society’s speech on the basis of its content or viewpoint. The Clause also prohibits Defendants from imposing a prior restraint on Plaintiffs’ speech, and protects the rights of Dr. Heap and The Humanist Society to associate for expressive and religious purposes.

252. The U.S. Navy chaplaincy is designed to accommodate the free exercise of religion. Its purposes include “caring for all Service members, facilitating the religious requirements of personnel of all faiths, [and] providing religious organization (RO)-specific

ministries” SECNAVINST 5351.1 ¶ 5. The Navy defines the Chaplaincy as “the field of endeavor in which Navy chaplains deliver to the Naval Service and authorized recipients religious ministry[.]” *Id.* Encl. 1 ¶ 1. Chaplains “provide[] for the free exercise of religion for all military members of the Department of the Navy[.]” OPNAVINST 1730.1D ¶ 4.d.

253. U.S. Navy chaplains create and operate in a forum that encourages and fosters freedom of religious expression.

254. Chaplains provide counseling to Navy service members. SECNAVINST 1730.7D ¶ 5(e). Consultations with chaplains are protected as confidential in order to encourage “unconstrained ability to discuss personal matters in complete privacy” SECNAVINST 1730.9 (Feb. 7, 2009). The confidentiality of chaplain consultations includes the clergy-penitent privilege. *Id.* ¶ 4(a). Confidentiality prohibits commanders from requiring chaplains to disclose any information conveyed to the chaplain in the chaplain’s role as a spiritual advisor that is not intended to be disclosed to third persons. The right of chaplains and service members consulting with chaplains to withhold information from other military personnel, including their superiors, distinguishes the chaplaincy as a distinct forum for speech and expression within the Navy.

255. Chaplains carry out religious programs “that accommodate diverse religious ministry requirements.” SECNAVINST 1730.7D ¶ 5.e(3)(b). Chaplain-sponsored religious programs must “accommodate[] the religious needs, preferences, and rights of the members of” the command served by the chaplain. *Id.* ¶ 6(a). Carrying out religious programming necessarily requires freedom to engage in religious expression.

256. Federal law prohibits commanders from dictating to chaplains the content of their speech and religious exercise by permitting chaplains to refuse to “perform any rite, ritual, or

ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain.” National Defense Authorization Act for Fiscal Year 2013, P.L. No. 112-239, § 533(b)(1), 126 Stat. 1631.

257. Navy commanders are prohibited from “compel[ing] chaplains to act in a way that is inconsistent with the tenets of their faith.” SECNAVINST 1730.7D ¶ 6.e. A chaplain may refuse to provide or perform religious services at command functions and is entitled to do so “without adverse consequences.” *Id.* Commanders also are prohibited from “assign[ing] chaplains collateral duties that violate the religious practices of the chaplain’s [religious organization] or that require services in a capacity in which the chaplain may later be called upon to reveal” confidential information. *Id.* ¶ 6.g.

258. The Navy designates the Navy Chaplaincy as a forum for the free exchange of religious, moral, ethical, and spiritual ideas and for the provision of care and counseling to service members and their families. Because the Navy provides this forum to service members, it cannot discriminate against persons seeking access to that forum based on the content and/or viewpoint of their speech.

259. By rejecting Plaintiffs’ application to serve as a U.S. Navy chaplain and qualified endorsing organization because of their Humanist beliefs, Defendants excluded Dr. Heap and The Humanist Society from the chaplaincy because of the content and viewpoint of their speech.

260. Dr. Heap and all other chaplain applicants endorsed by The Humanist Society cannot address, minister to, or associate with Navy service members as chaplains unless the AFCB first recognizes The Humanist Society as a qualified endorser of chaplains. Approval by the AFCB thus serves as a form of licensing system for speech and expressive association that

the Navy and AFCB Defendants have applied to bar a Humanist organization from becoming a qualified endorser of chaplains because of its Humanist viewpoint. The Navy and AFCB Defendants have imposed an unconstitutional prior restraint on speech and association by Dr. Heap and The Humanist Society by refusing to recognize Dr. Heap as a chaplain and The Humanist Society as a qualified endorser of Navy chaplains because of their Humanist viewpoint.

261. By rejecting Plaintiffs' application and refusing to recognize The Humanist Society as a qualified endorsing organization, Defendants have unconstitutionally abridged the associational rights of Dr. Heap and Navy service members who would otherwise have congregated for expressive and religious purposes with Dr. Heap as a Humanist chaplain, for no reason other than that they are Humanists. Defendants have similarly abridged the associational rights of other chaplains endorsed by The Humanist Society and the Navy service members who would have congregated with them because they are Humanists.

COUNT SEVEN

(Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics)

262. Plaintiffs incorporate by reference and reallege all foregoing paragraphs herein.

263. Dr. Heap alleges the constitutional violations in Counts II-IV and VI against Defendants Moran, Andrews, Tidd, Kibben, Wright, Stendahl, Page, Gard, Horn, Rutherford, Bailey, the CARE Board Defendants, and John and Jane Does # 31-40 in their individual capacities pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Department of Defense and Navy regulations required each of these Defendants to make a final decision and/or recommendation as to whether to accept or reject Plaintiff Heap

as a U.S. Navy Chaplain and as to whether to recognize The Humanist Society as a religious organization qualified to endorse candidates for the U.S. Navy chaplaincy. *Supra* I.B-C & III.A. Each of these Defendants recommended or made a final determination, as required and permitted by his or her level of responsibility under these DoD and Navy regulations, to reject Plaintiff Heap and/or The Humanist Society because they are Humanists , in violation of the constitutional provisions alleged in Counts II-IV and VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims and request that the Court award the following relief:

A. Declaring pursuant to 28 U.S.C. §§ 2201 & 2202, or other applicable statute or rule of law or equity, that the Navy Defendants' and AFCEB Defendants' rejection of Dr. Heap's application and refusal to recognize The Humanist Society as a qualified endorsing organization violated Plaintiffs' rights under the Religious Freedom Restoration Act and/or the First and Fifth Amendments and/or the No Religious Tests Clause of the United States Constitution;

B. Declaring DoDI 1304.28 unconstitutional as violative of the No Religious Test Clause of the United States Constitution insofar as it requires attestation of affiliation with a DoD-approved ecclesiastical endorser as a prerequisite to receiving a federal office as chaplain;

C. Ordering, pursuant to 28 U.S.C. § 1361 or other applicable statute or rule of law or equity, that:

1. Defendants instate Jason Daniel Heap as a Navy chaplain with full and equal rights and benefits as other Navy chaplains immediately, or providing other equally

effective equitable relief as appropriate, and awarding Dr. Heap backpay beginning May 27, 2014, and monetary damages;

2. Defendants be required to recognize The Humanist Society as a qualified ecclesiastical endorser within the meaning of all applicable Department of Defense and Navy instructions and regulations on a full and equal basis as other qualified ecclesiastical endorsing organizations, or, alternatively, declaring the Navy and Department of Defense's procedures requiring chaplaincy candidates to be endorsed by a religious organization unconstitutional and void;

3. Enjoining the Defendants from requiring The Humanist Society to comply with the procedures for first-time ecclesiastical endorsers in DoDI 1304.28, or any other procedures different from those applied to other qualified ecclesiastical endorsing organizations;

4. Enjoining the Defendants from rejecting applications from candidates for the Navy chaplaincy and from organizations seeking to become qualified ecclesiastical endorsers on the basis that the candidates and/or organizations are Humanists, or, alternatively, declaring that the Defendants may not require that applicants for the chaplaincy be adherents of any religion;

D. Awarding Dr. Heap equitable relief in the form of backpay;

E. Awarding Dr. Heap monetary relief in the form of lost wages and other compensatory damages; and

F. Awarding Plaintiffs 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; the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb;
and/or any other applicable statute or rule of law or equity.

February 13, 2015

Respectfully submitted,

/s/ Joshua S. Devore

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2015, I electronically filed Plaintiff's Amended Complaint with the Clerk of the Court using the CM/ECF system, which will send a notification of electronic filing to the parties.

/s/ Joshua S. Devore
Joshua S. Devore (# 45312)