No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD ARNOLD, ET AL,

Petitioners

v.

SECRETARY OF THE NAVY, ET AL.

Respondents

On Application for an Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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PETITIONERS' APPLICATION TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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To the Honorable Chief Justice John Roberts, as Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2 and 30.3, the 21 non-liturgical retired and former Navy chaplain petitioners listed below respectfully request that the time to file their petition for a Writ of Certiorari in this matter be extended for 60 days up to and including Monday, June 20, 2022. No corporate disclosure statement is needed as all the petitioners are individuals.

The U.S. Court of Appeals for the District of Columbia issued its unpublished Judgment denying Petitioners' appeal on November 12, 2021, Appendix ("App.") A, and denied Petitioner's request for a hearing en banc on January 19, 2022, App. B.

Absent an extension of time, the Petition for Writ of Certiorari would be due on April 19, 2022. Petitioners are filing this Application more than 10 days prior to that date in accordance with S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1). The 60 day extension of time would move the filing date to Saturday, June 18, 2022; S. Ct. R. 30 extends the filing date to Monday, June 20, 2022.

Petitioners were unable to contact the Solicitor General ("SG"), to ascertain Respondents' position on this request until April 4, 2022. Calls to the SG's listed Office number, 202-514-2203, provided a recorded message the SG's Office is working from home due to COVID and callers should "leave a message." Counsel left his name, phone number, the reason for his call and has yet to receive a response. The following note appears on the SG's "Contact the Office" webpage.

> If you have questions on seeking consent to file an amicus brief in a government case in the Supreme Court, or have any other questions concerning government cases in the Supreme Court, please contact the OSG Case Management Section at 202-514-2217/18 between the hours of 9:00 am to 5:30 pm EST, Monday - Friday

Numerous calls to the first number (202-514-2217) over several days beginning on March 29, 2022, were not answered. The second number, 202-514-2218, was answered by a "driver" who said he's been given this number for when he is needed. A comment to the SG Webmaster explained my interest, the SG's webpage information was pre-COVID, the assistance numbers were incorrect and useless. The email response acknowledged receipt and the comments forwarded to the appropriate personnel to respond. No further response has been provided. On April 4, 2022, someone answered the first number and provided an email. Counsel's email requested Respondent's position on this motion/application but no response has been received as of this filing, which can no longer wait.

THE LIST OF PETITIONERS

Petitioners are 21 retired or former Navy Non-liturgical chaplains: Richard L. Arnold, Michael Belt, William C. Blair, Andrew Calhoun, Martha Carson, Timothy J. Demy, Joseph E. Dufour, Alan Garner, John Gordy, Furniss Harkness, Thomas G. Klappert, Michael Lavelle, James Looby, Walker E. Marsh, Jr., Denise Y. Merritt, Edith Rene Porter-Stewart, Rafael J. Quiles, Daniel E. Roysden, Mary Helen Spalding, Armando Torralva, and David Wilder. They were former plaintiffs in *In re Navy Chaplaincy*, 07-mc-269 (D.D.C.) whose individual claims of retaliation, constructive discharge and interference with religious speech

were severed after dismissal of their systemic claims of denominational preferences and discrimination in Navy chaplain promotions procedure. *See In re Navy Chaplaincy*, 323 F.Supp. 3d 25, 31 (D.D.C. 2018), *aff'd,* No. 19-5204 Consolidated with 19-5206, *Associated Gospel Churches v. United States Navy (In re Navy Chaplaincy*) (D.C. Cir., Nov. 6, 2020), *cert denied sub nom, Chaplaincy of Full Gospel Churches v. Dep't of the Navy*, 142 S. Ct. 312 (2021).

BACKGROUND

As stated above, the issues before the U.S. Court of Appeals for the District of Columbia involved the severed individual claims remaining after *In re: Navy Chaplaincy* granted Respondents summary judgment dismissing Petitioners' systemic discrimination claims and held 10 U.S.C. § 613a barred discovery of board proceedings necessary to support and prove Petitioners' systemic constitutional claims.

The original 27 *Arnold* plaintiffs' specific injuries and the facts giving rise to their specific individual claims were identified in *Arnold's* Complaint § IV, PARTIES, ¶ A, "Chaplain Plaintiffs' and Their Claims", specifically ¶¶ 16.a (Arnold) through 16.aa (Wilson). Petitioners' Count 1, "Illegal Retaliation", alleged certain senior chaplains retaliated against them for exercising their Non-liturgical faith, their right to represent their denomination or faith group, and/or for opposing senior chaplains' abuse of authority, illegal activity, interference with ministry and/or religious jealousy.

Petitioners specifically claimed the Navy Chaplain Corps had specific

denominational conduits which facilitated retaliation through promotion board procedures for perceived grievances or denominational issues, *e.g.*, challenging senior chaplain supervisors' improper or illegal actions. That retaliation was possible because specific promotion procedures allowed a single chaplain board member to anonymously guarantee a candidate would "fail of selection" ("FOS") and torpedo his or her career. Petitioners cited evidence in Inspectors General ("IG") investigations of four Chaplain Corps promotion boards: the Chaplain Commander boards for fiscal year ("FY") 1997 (Deputy Chief of Chaplains and board president successfully "lobbied" for a previous FOS candidate from the Deputy's denomination) and 1998 (board member's negative comments not in the record on candidate who had confronted the member about womanizing and drinking had influenced other board members); and the Captain Chaplain boards for FY 2000 (female chaplain board member "zeroed out" female candidate over theological differences) and 2009 (the Deputy Chief of Chaplains "reprised against" his former executive assistant who had previously filed an equal opportunity complaint).

"Zeroing out" describes the result of a board member pressing the **zero** button ("0") on the board voting machine, one of five possible evaluations of the candidate's "promotability": 0, 25, 50, 75, 100. A "0" (or 25) vote guaranteed the candidate's failure of selection and often the end of a career. The small number of board members and the great difference in number values produced a significant negative impact on the candidate's score. The Navy kept no record of individual votes, guaranteeing no accountability for career assination. The Chief of Chaplains

admitted to the Naval Inspector General "zeroing out" was a serious Chaplain Corps problem. The FY 2000 IG complainant testified to the Naval Inspector General she had seen "zeroing out" on six chaplain boards where she had been a recorder.

Two IG investigations showed the Chief or Deputy Chief of chaplains who act as board presidents used their influence and position to either promote or deny promotions to chaplains they favored or disfavored. Some Petitioners alleged the Chief or Deputy were hostile to them; other Petitioners cited specific senior chaplains with a record of hostility toward them who were on their board. Other Petitioners claimed senior chaplains retaliated through a "cats paw", i.e., a friend on the board. Neither *In re Navy Chaplaincy* nor *Arnold* ever evaluated those procedures in the context of Petitioner's claims; *Committee for Public Education v. Nyquist,* 413 U.S. 756, 794 (1973) command to carefully examine "any [practice] challenged on establishment grounds with a view to ascertaining whether it furthers any of the evils against which that Clause protects"; and the First and Fifth Amendments' religious neutrality mandate.

Petitioners allege the board procedures provide the "nexus" between the exercise of their protected activity and the Navy's retaliatory actions to ensure they were not promoted. The IG inspections show the validity of that claim.

Petitioners' *Arnold* Count 2 challenged the application of *Chaplaincy*'s previous denial of discovery to their individual claims. This included not allowing plaintiff witnesses who served on promotion boards to provide testimony about

denominational preferences, hostility, and retaliation they had witnessed as recorders or other job supporting promotion boards. Respondents failed to produce unredacted copies of the IG investigations' interviews and reports and ordered former board members not to testify.

Adair v. Winters, 451 F.Supp.2d 210, 216-219 (D.D.C. 2006), the second chaplain cases prior to consolidation into *In re Navy Chaplaincy*, acknowledged *Webster v. Doe*, 486 U.S. 592, 603-04 (1988) granted plaintiffs/Petitioners the right to pursue "colorable constitutional claims" and board members testimony was relevant for plaintiffs' individual claims. *Adair* then held plaintiffs did not need discovery of individual board proceedings because plaintiffs' challenged practices and policies were subject to strict scrutiny.

"[I]f the plaintiffs can demonstrate after discovery that some or all of the Navy's policies and practices suggest a denominational preference [*i.e*, a systemic claim], then the court will apply strict scrutiny to those policies and practices for which the plaintiffs have met this initial burden." *Id.* at 219 (quoting *Adair v. England*, 217 F.Supp.2d 7, 14-15 (D.D.C. 2002) (citing *County of Allegheny v. ACLU*, 492 U.S. 573, 608-09 (1979)).

Unfortunately, the district court consistently refused to follow the very case law it cited; subsequent judges misinterpreted *Adair's* holding as saying plaintiffs did not need discovery and they had no right to discovery, a holding the Circuit affirmed. App. A-2. Without discovery there can be no retaliation claim because plaintiffs can never obtain the necessary evidence to establish the nexus in a secret

system protected by the Uniform Code of Military Justice. This denied Petitioners right to a fair trial, an equal opportunity to obtain justice, and their right to be free from religious prejudice.

Rather than distinguish between individual claims and systemic claims where intentional discrimination was the employer's "standard operating procedure", the company's way of doing business, *see Int'l Brotherhood. of Teamsters v. United States,* 431 U.S. 324, 336 (1977), *Arnold* held resolution of the systemic claims was res judicata as to Petitioners' individual claims. The district court improperly found the systemic and individual claims arose from the same set of facts without identifying what those facts were and the Court of Appeals agreed. App. A- 2.

Arnold rejected the fact each of the chaplain promotion board IG investigations concluded there was no "systemic" board problems despite evidence otherwise and yet found individual cases of clear retaliation. The IG inspections are not mentioned in the district or appellate court decisions.

The district court and the Court of Appeals rejected Petitioners' argument there is a difference between systemic claims and individual claims despite a similarity of some facts supporting both types of claims. *Arnold* rejected Petitioners' example of *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338 (2011) where the Court found those plaintiffs failed to establish "that Wal-Mart operated under a general policy of discrimination", *id.* at 353, or "identif[y] a common mode of exercising discretion that pervades the entire company", *id.* at 356, a systemic claim.

Wal-Mart rejected the plaintiffs' attempt to a certify a class action attacking the company's "systemic" policy of discrimination and remanded the case for the plaintiff's to file their individual discrimination claims, based on the same underlying facts.

Some of Petitioners's retaliation claims involved incidents not associated with promotion boards. For example, Petitioner Belt was a cripple because Navy malpractice destroyed his hip cartilage and addicted him to painkillers. The Chaplain Corps insisted he be improperly discharged despite his incomplete medical evaluation board which would have allowed him to be retired medically with a pension. This was in retaliation for joining and advertising the *Adair* litigation among chaplains in San Diego. Petitioner Roysden challenged (1) Navy officials directing the outcome of the investigation into his claims of retaliation against his supervisor; (2) further retaliation by the Board of Correction of Naval Records that acknowledged the evidence of his supervisor's denominational hostility and oppression but denied the retaliatory actions impacted his evaluation and promotion; and (3) the improper removal of a good fitness report before a promotion board, which violated his right to have his full and complete record reviewed by the board. The D.C. Circuit is silent on these issues.

Arnold raises several critical issues contrary to well-established precedent. That includes whether a federal court can ignore this Court's holding "the Establishment Clause forbids subtle departures from neutrality, 'religious gerrymanders,' as well as obvious abuses." *Gillette v. U.S.*, 401 U.S. 437, 452

(1971)(citation omitted); *accord Nyquist, Ibid.*

Nowhere in petitioners' 22 years plus litigation have the courts acknowledged the legal consequences of the fact chaplains are denominational representative and promotion boards composed of chaplains award or deny government benefits to other denominational representatives. The IG investigations' evidence shows some chaplains, persons defined by their religious identity, abuse the delegated discretionary civic authority using selection procedures without "effective means of guaranteeing that the delegated power will be used solely for secular, neutral and nonideological purposes." *Larkin v. Grendle's Den, Inc.,* 413 U.S. 116, 125 (1982) (quoting *Nyquist.* 413 U.S. at 780); *accord Bd. of Educ. v. Grumet,* 512 U.S. 687, 703 (1994) (Establishment Clause requires effective guarantees "that governmental power will be and has been neutrally employed" when delegating discretionary civic power to persons defined by their religious identity); *id.* at 696, 698 (similar)). That power was used to retaliate against Petitioners.

Reasons for Granting An extension of Time

The time to file a petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. The above discussion illustrates some of S. Ct. Rule 10's "compelling reasons" for this Court's appropriate review and intervention. The D.C. Circuit has rendered a decision in conflict with other United States court of appeals on the same important matter; and "has so far departed from the accepted and usual course of judicial proceedings"; it has "sanctioned such a departure by a lower court,

as to call for an exercise of this Court's supervisory power"; and "has decided an important federal question in a way that conflicts with relevant decisions of this Court." *Id.*

Arnold raises serious First and Fifth Amendments questions. Lower courts have not given Petitioners' individual claims of religious retaliation the searching inquiry this Court's precedents require and ignored unchallenged evidence of religion based retaliation. The Court should review and reject *Arnold*'s contrary decisions which shield a government agency from accountability and reward violations of Petitioners' fundamental rights.

2. The primary reason for asking for delay is counsel's past and current schedule and legal duties have not and will not allow sufficient time to adequately prepare the petition due to unique combinations of new legal issues and demands.

A. *Lancaster v. Secretary*, 2: 19-cv-095 (E.D. VA) is a case severed from *In re Navy Chaplaincy*. Commander Allen Lancaster, the plaintiff, died in August 2021. Fed. R. Civ. P. ("Rule") 25(a) allows substitution of his executrix as the plaintiff, normally a simple thing. However, shortly after being informed of Lancaster's death, the district court dismissed his claims granting the Defendants' motion to dismiss. His wife was named executrix in late December, 2021, beginning the 90 day window to file a Rule 25 motion.

The law is well-established the death of a party denies a court jurisdiction over the deceased party and is supposed to stay the action until a successor is substituted or the case is dismissed for lack of prosecution or failure to follow Rule

25. Because the case was dismissed, Mrs. Lancaster filed on March 3, 2022, a Rule 60(b) motion to reopen the case, vacate the dismissal of Lancaster's claims, substitute her as a plaintiff under Rule 25, and allow her to continue the Rule 15(a)(2) process begun before her husband's death, and file a motion for leave to amend his complaint. The district court had given Lancaster permission to seek leave to amend before his death and he had almost completed the process before he died unexpectedly. The Defendants objected to all requests. The court's dismissal of Lancaster's claims while his Rule 15 process was almost complete makes this case unique, requiring a lot of research. Mrs. Lancaster filed her reply brief April 1, 2022, and request for a hearing which Defendants will oppose.

B. Counsel has represented chaplain endorsing agents and chaplains. He has assisted chaplain clients and others to file religious accommodation requests (RARs) concerning the military vaccine mandate under the Religious Freedom Restoration Act. The only RARs approved are for those at or near retirement. Courts have found the RAR process theater or a sham. Many chaplains are waiting their Service's expected denial of their appeal of the denial of their RAR which have just started. Once denied, there is very little time (five days) to stop what amounts to an illegal disciplinary discharge.

Having unsuccessfully tried to initially refer these and other chaplains to other firms, I can state there are few law firms with any capacity and capability to represent these chaplains given the large demand for counsel within the civilian sector let alone for the military on the vaccine mandate. Counsel's obligations to his

endorser clients and chaplains require he assist them in defending their religious liberty and protect them from abuse.

Counsel's former representation of chaplains has attracted many other chaplain requests for assistance. With help from a public interest religious liberty organization, counsel will soon file a class action complaint for chaplains because they have special statutory protections, in addition to the Religious Freedom Restoration Act, that have been ignored or abused. Preparing the necessary documents requires extensive coordination with clients; review of facts; drafting, editing and research; and review of similar case proceedings.

New facts or evidence concerning the impropriety of the mandate surface regularly which requires coordination with other counsel.

C. Counsel has other legal duties and obligations he cannot ignore, *e..g.*, executive director for association of chaplain endorsers.

3. Counsel believes he has medical issues arising from his COVID vaccine that have at times impaired his ability to timely address the above legal issues. He regularly gets fatigued, something that did not happen before COVID vaccination, requiring a nap. This is part of something being called "Long COVID." *See* https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid-long-haulers-long-term-effects-of-covid19; https://www.nytimes.com/interactive/2022/02/19/science/long-covid-causes.html

It has become a safety issue when driving in the last two months. Other strange symptoms affecting muscles and joints previously unknown have suddenly

manifested, similar to reports by others after receiving the vaccine. Some researchers are beginning to express concern about the number of injuries related to COVID vaccination and lack of government follow-up or interest. The 60 day extension will allow counsel to meet these competing issues and properly prepare the petition.

4. Respondents suffer no prejudice with the grant of a 60 day extension.

CONCLUSION

A 60 day extension will resolve the unusual flood of legal and other issues described above that limited Counsel's ability to prepare a petition. It is in the interest of justice to grant it. Petitioners respectfully request the time to file a Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including June 20, 2022.

Respectfully submitted,

April 6, 2022

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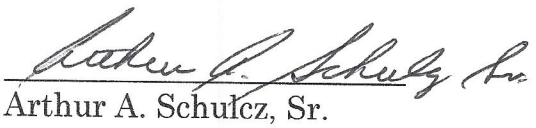
CERTIFICATE OF SERVICE

This is to certify that a copy of this application was served by email to the address provided by the Solicitor General's office (Supremectbriefs@usdoj.gov) on April 7, 2022, and by overnight express to the Solicitor General as described by its webpage in accordance with Supreme Court Rule 22.2 and 29.3:

Elizabeth Prelogar
Solicitor General
Office of the Solicitor General
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001



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APPENDIX A

November 12, 2021, U.S. Court of Appeals for the District of Columbia Unpublished Judgment Denying Petitioners' Appeal

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5330

September Term, 2021

FILED ON: NOVEMBER 12, 2021

RICHARD ARNOLD, ET AL.,
APPELLANTS

RICK P. BRADLEY, ET AL.,
APPELLEES

v.

SECRETARY OF THE NAVY, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:19-cv-02755)

Before: TATEL, RAO and WALKER, *Circuit Judges*.

JUDGMENT

We heard this appeal on the record from the United States District Court for the District of Columbia. After giving full consideration to the parties' briefs, we have determined that the issues therein do not warrant a published opinion. *See* D.C. Cir. R. 36(d). Given the district court's careful and sound analysis, it is hereby

ORDERED and **ADJUDGED** that the decision of the district court be affirmed.

This case is the offshoot of a long-running dispute between former non-liturgical Protestant Navy chaplains and the Navy. The underlying dispute has fueled more than twenty years of litigation, demanded the resources of multiple district judges, and occupied several court of appeals panels. *In re Navy Chaplaincy*, 323 F. Supp. 3d 25, 31 (D.D.C. 2018). In 2018, the district court granted summary judgment to the Navy as to the chaplains' systemic challenges to broadly applicable personnel procedures. *See generally id.* That decision left only the chaplains' individualized claims to be resolved.

In this most recent round of litigation, the chaplains purport to bring those individualized claims, alleging that the Navy: (1) retaliated against them; (2) constructively discharged them;

(3) discriminated against their religious free speech; and (4) violated the Religious Freedom Restoration Act (RFRA). Complaint at 67–72, *Arnold v. Secretary of Navy*, No. 19-2755, 2020 WL 1930393 (D.D.C. Apr. 21, 2020) ("Complaint"). The chaplains further argue that 10 U.S.C. § 613a, a statute barring disclosure of Naval personnel selection board proceedings, runs afoul of the Constitution by denying them evidence necessary to bring their claims. *Id.* at 70.

The district court dismissed all but the religious speech claims on res judicata grounds, to the extent that the claims raised systemic challenges already litigated. But the court severed the individual claims related to retaliation, constructive discharge, and religious speech and granted the chaplains the opportunity to refile those claims individually. In addition, finding the chaplains' filings "duplicative and harassing," the district court issued a pre-filing injunction requiring the chaplains to seek leave of the court prior to refiling individual claims. *Arnold*, 2020 WL 1930393, at *9–10. The court also denied the chaplains' motion for reconsideration regarding section 613a. On appeal, the chaplains ask us to reverse and vacate the district court's orders and to rule that they have a constitutional right to discovery of promotion board proceedings. Appellants' Br. 53.

We review the application of res judicata de novo. *Sheptock v. Fenty*, 707 F.3d 326, 330 (D.C. Cir. 2013). The district court's denial of the motion for reconsideration and pre-filing injunction we review for abuse of discretion. *See Judicial Watch, Inc. v. United States Department of Defense*, 913 F.3d 1106, 1110 (D.C. Cir. 2019) (applying abuse-of-discretion standard to review denial of motion for reconsideration); *Crumpacker v. Ciraolo-Klepper*, 715 F. App'x 18, 20 (D.C. Cir. 2018) (per curiam) (applying same to review pre-filing injunction). The differing standards of review matter little here, however, because even if we were reviewing the entirety of Judge Bates's decisions de novo, we would affirm.

First, we agree with the district court that the chaplains' claims are barred by res judicata. Although the chaplains set forth detailed fact patterns as to each plaintiff in their complaint, Complaint at 19–66, they fail to anchor their retaliation or constructive discharge claims to individualized facts. Instead, they rehash their attacks against systemic "challenged procedures" already litigated and decided. *Id.* at 69–70; *Arnold*, 2020 WL 1930393, at *4–6. The chaplains' RFRA claim is likewise untethered to individualized allegations, amounting to the same broad RFRA claim that the district court decided in 2018. *Compare* Complaint at 71–72 (most recent RFRA claim), *with In re Navy*, 323 F. Supp. 3d at 38 (summarizing previous RFRA claim). Although on appeal the chaplains point out that the district court never decided their individualized claims, *see e.g.*, Appellants' Br. 23, that argument misses the point. The district court properly barred the chaplains' claims to the extent they were systemic and instructed the chaplains to refile their individual claims in separate lawsuits, which they failed to do. Last, the chaplains' challenge to section 613a is precluded many times over. The district court had rejected this constitutional argument three times before the chaplains brought their most recent section 613a claim, *Arnold*, 2020 WL 1930393, at *7, and has done so a fourth and fifth time in its two most recent orders dismissing the claim and denying reconsideration. Nothing in the chaplains' arguments on appeal provides any basis for questioning decisions by the district court and our court that no constitutional right to evidence exists merely because of its importance to a

constitutional claim. *In re Navy Chaplaincy*, Nos. 19-5204, 19-5206, 2020 WL 11568892, at *1 (D.C. Cir. Nov. 6, 2020) (per curiam) (rejecting the chaplains' section 613a argument and quoting district court opinions doing the same).

We also have no difficulty affirming the district court's pre-filing injunction. Judge Bates carefully considered the factors that we require prior to issuing a pre-filing injunction: (1) providing the chaplains notice and an opportunity to be heard; (2) establishing an adequate record for review; and (3) making substantive findings as to the frivolous or harassing nature of the chaplains' actions. *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988) (per curiam). After allowing the chaplains to brief the issue, the district court catalogued previous lawsuits in which the chaplains brought the same claims, further noting that the chaplains and their counsel were "unrepentant" about their duplicative filings, misrepresentations to the court, and forum shopping. *Arnold*, 2020 WL 1930393, at *8–9. Judge Bates crafted the pre-filing injunction to "appl[y] only to the narrow category of litigation against the Navy for alleged religious discrimination, within which the [c]ourt ha[d] found that plaintiffs ha[d] been engaged in repetitive and harassing litigation." *Id.* at *10. On appeal, the chaplains make no real effort to demonstrate that the pre-filing injunction was an abuse of discretion. Instead, they simply disagree with the court's findings as to claim preclusion. *See* Appellants' Br. 50–53.

The Clerk is directed to withhold the issuance of the mandate herein until seven days after the resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

APPENDIX B

January 19, 2022, U.S. Court of Appeals for the District of Columbia Order Denying Petitioners' Petition for a Hearing En Banc

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5330 **September Term, 2021**

1:19-cv-02755-JDB

Filed On: January 19, 2022

Richard Arnold, et al.,

Appellants

Rick P. Bradley, et al.,

Appellees

v.

Secretary of the Navy, et al.,

Appellees

BEFORE: Srinivasan, Chief Judge; Henderson, Rogers, Tatel, Millett, Pillard, Wilkins, Katsas*, Rao, Walker, and Jackson, Circuit Judges.

ORDER

Upon consideration of appellants' unopposed motion for enlargement of time to file their petition for rehearing en banc and the lodged petition, and the absence of a request by any member of the court for a vote, it is

ORDERED that the motion for enlargement of time be granted. The Clerk is directed to file the lodged petition for rehearing en banc. It is

FURTHER ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Anya Karaman
Deputy Clerk

* Circuit Judge Katsas did not participate in this matter.