

**No. 09-16404**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**PATRICK M. McCOLLUM; et al.,**

Plaintiffs-Appellants,

v.

**CALIFORNIA DEPARTMENT OF CORRECTIONS  
AND REHABILITATION; et al.,**

Defendants-Appellees.

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ON APPEAL FROM THE DISTRICT COURT  
OF THE NORTHERN DISTRICT OF CALIFORNIA  
D.C. Number 3:04-cv-03339-CRB

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**BRIEF OF INTERFAITH COMMUNITY REPRESENTATIVES  
AS *AMICI CURIAE* SUPPORTING REVERSAL**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for amici curiae certify that the American Correctional Chaplains Association, the American Catholic Correctional Chaplains Association, the Aquarian Tabernacle Church, the Cherry Hill Seminary, the Covenant of the Goddess, the Institute of Buddhist Studies, the and the Interfaith Council of Contra Costa County have no parent corporations nor does a publicly held corporation own 10% or more of any of those corporations' stock.

Dated: December 1, 2009

Respectfully submitted,

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## INTERESTS OF THE AMICI CURIAE

*Amici* include representatives of interfaith organizations, faith groups, and collective educational and social efforts to engage in understanding across religious and spiritual beliefs. As inclusive communities committed to facilitating dialogue between the faiths and ensuring that all faiths are treated fairly, *amici* have an interest in fair and nondiscriminatory treatment of religious interests under the law. Thus, *amici* join in support of fair policies and fair treatment in allocating resources for the practice of religious and spiritual beliefs by the California Department of Corrections and Rehabilitation (“CDCR”).

Rev. Charles Gibbs is the Executive Director of the United Religions Initiative (“URI”). URI is a membership organization which includes thousands of members in over seventy-two countries representing more than 100 religious traditions, spiritual expressions, and indigenous traditions. Founded in 2000, URI is committed to promoting enduring, daily interfaith cooperation and to ending religiously motivated violence.<sup>1</sup>

Rev. Paul Chaffee is the founding Executive Director of the Interfaith Center at the Presidio (the “Interfaith Center”). The Interfaith Center is an inter-religious advocate of peacemaking among religions, locally and globally. The Interfaith Center welcomes, serves, and celebrates the diverse spiritual wisdom and faith

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<sup>1</sup> For more information about URI, see URI – United Religions Initiative – Home, <http://www.uri.org> (last visited Nov. 15, 2009).

traditions of the San Francisco Bay Area. Incorporated in 1995, the Interfaith Center develops local and global connections, and creates interfaith learning environments and resources.<sup>2</sup>

Diana L. Eck is a Professor of Comparative Religion and Indian Studies, and the Director of the Pluralism Project at Harvard University (the “Pluralism Project”). The Pluralism Project began as a study of America’s changing religious landscape in 1991. As immigration changes the religious landscape of the United States, the Pluralism Project documents the contours of religious society in the United States, explores new forms of interfaith engagement and studies the impact of religious diversity in civic life.<sup>3</sup>

James A. Donahue is a Professor of Ethics and the President of the Graduate Theological Union (“GTU”). GTU consists of nine theological seminaries and eight academic centers offering interdisciplinary graduate education. Founded in 1962, GTU encourages ecumenical and interfaith dialogue. GTU has produced thousands of alumni who teach, minister, and work to achieve the greatest good, leading institutions and work for peace and justice worldwide.<sup>4</sup>

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<sup>2</sup> For more information about the Interfaith Center, see Interfaith Center at the Presidio of San Francisco, <http://www.interfaith-presidio.org> (last visited Nov. 15, 2009).

<sup>3</sup> For more information about the Pluralism Project, see The Pluralism Project at Harvard University, <http://pluralism.org> (last visited Nov. 15, 2009).

<sup>4</sup> For more information about GTU, see Graduate Theological Union, <http://www.gtu.edu> (last visited Nov. 15, 2009).

The Covenant of the Goddess (the “Covenant”) is one of the largest and most representative Wiccan/Pagan religious organizations in the world. Elder Donald H. Frew is National Interfaith Representative for the Covenant, and has engaged in interfaith work on behalf of the Covenant for over 25 years, serving on the Executive Committee of the Berkeley Area Interfaith Council, the Board of the Interfaith Center, the Global Council of URI, and in the Assembly of Religious & Spiritual Leaders of the Parliament of the World's Religions. Through its National Interfaith representatives, the Covenant proudly supports interfaith relationships and works with other faiths in interfaith organizations around the world.<sup>5</sup>

Cherry Hill Seminary is a learning community that exists to train Pagans to do the work of professional ministry. The seminary provides an extensive education in diverse aspects of Pagan philosophy practice and skilled ministry. Cherry Hill Seminary intends to train chaplains for both prisons and the military. That includes prisons in California.<sup>6</sup>

Rev. Carol Hovis is an ordained Presbyterian minister and the current Executive Director of the Marin Interfaith Council (“MIC”). The MIC brings religious leaders and members of various faith communities together for study and

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<sup>5</sup> For more information about Covenant, see Covenant of the Goddess, About CoG, <http://www.cog.org/aboutcog.html> (last visited Nov. 16, 2009).

<sup>6</sup> For more information about Cherry Hill Seminary, see Cherry Hill Seminary, Mission Statement, [http://cherryhillseminary.org/about\\_mission.html](http://cherryhillseminary.org/about_mission.html) (last visited Nov. 16, 2009).

celebration. MIC believes increased sharing among people of many faith traditions deepens understanding and respect.<sup>7</sup>

The Institute of Buddhist Studies (“IBS”), a Buddhist seminary and graduate school affiliated with the GTU and associated with the Buddhist Churches of America. The IBS provides a program of education and training for students wishing to pursue a career in the Shin Buddhist ministry. Additionally, the IBS fosters the development of Shin Buddhist thought in the religious, philosophic and social context of contemporary America.<sup>8</sup>

Since its 1885 founding as the American Correctional Association’s first affiliate, the American Correctional Chaplains Association (“ACCA”) has served as a professional organization for pastoral care personnel in the corrections field. ACCA’s Chaplain Certification Program and Code of Ethics are considered to be the corrections industry standards for prison and jail chaplaincy. The current ACCA roster of some 850 individual chaplains, affiliate groups and associates covers the entire spectrum of religious entities, from the various denominations of Christianity through Judaism, Islam and Buddhism to Native American sects and other minority faiths. As such, ACCA is committed to insuring that the religious practices of all offenders are legally and properly provided for in all correctional

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<sup>7</sup> For more information about MIC, see Marin Interfaith Council, About MIC, <http://www.marinifc.org/content/about-mic> (last visited Nov. 21, 2009).

<sup>8</sup> For more information about the IBS, see The IBS, Welcome to the Institute of Buddhist Studies, <http://www.shin-ibs.edu/> (last visited Nov. 21, 2009).

settings. Several of ACCA's members reside and work in states that encompass the 9th Circuit area.<sup>9</sup> Chaplain Anthony J. Bruno is the current President of the ACCA.

The American Catholic Correctional Chaplains Association ("ACCCA") is the official Catholic organization which supports and certifies correctional chaplains and is committed to promoting and securing Restorative Justice for victims, offenders, and the community.<sup>10</sup> Chaplain Paul Rogers is the current President of the ACCCA and the past President of the ACCA.

Willam E. Leshner is Chair of the Board of Trustees of the Council for a Parliament of the World's Religions (the "Council") and President Emeritus of the Lutheran School of Theology at Chicago. The Council was created to cultivate harmony among the world's religious and spiritual communities and foster their engagement with the world and its guiding institutions in order to achieve a just, peaceful and sustainable world.<sup>11</sup>

The Interfaith Council of Contra Costa County ("ICCCC") is an autonomous local organization committed to supporting the religions and communities of

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<sup>9</sup> For more information about the ACCA, see American Correctional Chaplains Association, <http://www.correctionalchaplains.org> (last visited Nov. 21, 2009).

<sup>10</sup> For more information about the ACCCA, see American Catholic Correctional Chaplains Association, <http://catholiccorrectionalchaplains.org/> (last visited Nov. 24, 2009).

<sup>11</sup> For more information about the Council, see The Council for a Parliament of the World's Religions, <http://www.parliamentofreligions.org/index.cfm?n=1&sn=1> (last visited Nov. 24, 2009).

Contra Costa County, California. The ICCCC was originally organized for the primary purpose of providing chaplaincy ministries in various county institutions on behalf of local congregations. There are more than 100 congregations and organizations holding membership and affiliation with the ICCCC from a wide range of Christian and other faith traditions, including Jewish, Buddhist, Baha'i, Unitarian, Islamic, Sikh, Unity and Religious Science.<sup>12</sup>

Maha ElGenaidi is the founder of the Islamic Networks Group ("ING"), an educational outreach organization that promotes interfaith dialogues and education about world religions. ING annually delivers thousands of presentations and other educational programs in various fora, reaching hundreds of groups and tens of thousands of individuals a year at the local level, thereby bridging among people of all faiths and none.<sup>13</sup>

The Aquarian Tabernacle Church ("ATC") is a Wiccan tradition recognized officially through tax-exempt status in the United States as well as in Canada, Australia, New Zealand, South Africa and Ireland. ATC administers a prison ministry in six state prison systems. Pierre "Pete" Davis, founder of ATC, has served as the Wiccan member of the Washington Department of Corrections

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<sup>12</sup> For more information about the ICCCC, see The Interfaith Council of Contra Costa County, <http://www.interfaithcouncilofccc.net/about.htm> (last visited Nov. 24, 2009).

<sup>13</sup> For more information about ING, see Islamic Networks Group, <http://www.ing.org> (last visited Nov. 21, 2009).

Religious Services Advisory Committee, and as the past-president of the Interfaith Council of Washington State.<sup>14</sup>

Professor Michael York is the developer of the Pagan Studies Programme in the Department for the Study of Religion at Bath Spa University in Bath, England.

Professor York is also the author of *Pagan Theology: Paganism as a World Religion* (New York University Press: 2003) and *The Emerging Network: A Sociology of the New Age and Neo-pagan Movements* (Rowman and Littlefield: 1995).

*Amici* file this brief pursuant to the consent of Appellants and the concurrently filed Motion For Leave to File Brief of Interfaith Community Representatives as *Amici Curiae* Supporting Reversal.

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<sup>14</sup> For more information about ATC, see Aquarian Tabernacle Church, <http://www.aquariantabernaclechurch.org> (last visited Nov. 25, 2009).

## SUMMARY OF ARGUMENT

*Amici* respectfully ask this Court to rule that CDCR’s policy of hiring chaplains of only five religious and spiritual backgrounds (the “Five Faiths Policy”) is unconstitutional under the Establishment Clause. CDCR’s policy is not based on neutral criteria and thus cannot be allowed to stand. *Amici* argue below that the Five Faiths Policy, which permits the hiring of chaplains only if they are Protestant, Catholic, Jewish, Muslim, or Native American, excludes members of non-favored groups – including but not limited to Wiccans/Pagans<sup>15</sup> – to the detriment of members of all faiths, including those groups that the Policy covers.

## ARGUMENT

### **I. THE FIVE FAITHS POLICY EXCLUDES SOME RELIGIOUS GROUPS TO THE DETRIMENT OF ALL RELIGIOUS GROUPS.**

CDCR’s current Five Faiths Policy excludes from chaplain positions members of all but five of the religions that the interfaith community embraces and acknowledges. The Five Faiths Policy fails the neutrality requirement of the Establishment Clause and cannot meet strict scrutiny. *See Larson v. Valente*, 456 U.S. 228, 244-46 (1982). Thus, Appellants’ claims involve the differential

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<sup>15</sup> As in Appellants’ Opening Brief, this brief uses the terms “Wiccan/Pagan” to refer to “Wiccans, Goddess worshippers, Neo-Pagans, Pagans, Norse Pagans (and any other ethnic designation), Earth Religionists, Old Religionists, Druids, Shamans, Asatrus, and those practicing in the Faery, Celtic, Khemetic, Gardnerian, Church of All Worlds, Reclaiming, Dianic, Alexandrian, Iseum of Isis, Reconstructionist, Odinist or Yoruban Traditions, and other similar nature-based faiths.” Appellant’s Opening Br. at 1.

treatment of those who subscribe to spiritual beliefs outside the Five Faiths. The pernicious effect of this discrimination extends beyond Wiccans/Pagans to all members of the interfaith community.

The context in which correctional chaplains are hired is significant. All California state prisoners are entitled to “reasonable opportunities to exercise religious freedom.” Cal. Penal Code § 5009(a); *see also* 15 C.C.R. § 3210(a) (“Institution heads shall make every reasonable effort to provide for the religious and spiritual welfare of all interested inmates . . . .”); Cal. Dep’t of Corrections & Rehabilitation Operations Manual § 101060.1 (“The Department shall make a reasonable effort to provide for the religious and spiritual welfare of all interested inmates.”) [hereinafter DOM]. CDCR is responsible for providing such reasonable opportunities, because prisoners are “unable to freely attend to their religious needs and are therefore dependent on the government’s permission and accommodation for exercise of their religion.” *Cutter v. Wilkinson*, 544 U.S. 709, 721 (2005).

CDCR’s Five Faith Policy favors five specific faiths by barring applicants for all other faiths from applying for paid chaplain positions. Further, CDCR does not offer inmates subscribing to other faiths “reasonable opportunities” to express their religious affiliations because the preference given to the five faiths results in inequitable allocation of resources, not only chaplaincy services, but also access to volunteers, time and space for communal services, and funding. By establishing

official chaplain positions for members of a limited class (those of the Five Faiths), CDCR limits the ability of chaplains in other faiths to serve as CDCR chaplains and also limits the class of prisoners who can access – with minimal burden – religious services and materials.<sup>16</sup>

The Five Faiths Policy, which has the effect of privileging the practice of some religions over others, essentially endorses the practice of the Five Faiths over others. “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson*, 456 U.S. at 244; *see also Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) (noting that the Establishment Clause means that the state cannot “prefer one religion over another”). In addition, a policy that privileges one set of religions necessarily oppresses all non-privileged religions. Because CDCR’s Five Faiths policy prefers the enumerated faiths over all others, the policy violates the Establishment Clause.

A nondiscriminatory chaplaincy program under which chaplain positions are allocated among faiths according to a neutral standard is essential to ensure that aspiring chaplains are not barred from accessing public benefits solely because of their faith, and that prisoners of all faiths may engage in religious expression and

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<sup>16</sup> Chaplain hiring is about more than providing chaplains to minister to specific religious groups. At CDCR, a chaplain’s duties include providing spiritual education and visits, counseling inmates, and scheduling and administering religious programs. *See* DOM §§ 101060.4-101060.5. Thus, chaplains should be available to address the religious and spiritual wellbeing and rehabilitation of prisoners of all faiths.

practice. Hiring chaplains based on their religion, rather than their ability to work with all religions, not only establishes certain faiths but leads to oppression of other faiths by impinging on their freedom to exercise their own religion.

Restrictions that limit chaplain hiring to the Five Faiths impair all aspects of the religious and spiritual lives of those who subscribe to disfavored belief systems.

Further, chaplains, like other CDCR administrators and staff, act as gatekeepers to religious programs. *See* DOM §§ 101060.4-101060.5. Prisoners of non-Five Faith faiths must work with the permanent chaplains (currently limited to those of the Five Faiths) for access to the necessary instrumentalities and space to worship according to the tenets of their beliefs and practices. It is thus essential to ensure the neutrality of these gatekeepers so that certain religious practices are not promoted over others.

California is not a Five-Faiths state. Therefore, the effect of the non-neutral Five Faiths Policy on the goals of *amici* is profound. The goals of the interfaith community are to advance tolerance, awareness, education, and preservation of freedom of religious identity and expression. These goals are in direct opposition to the Five Faiths Policy. It is not possible to educate and promote religious tolerance where the State denies fair access to resources.

Ultimately, *Amici* have an interest in all religious adherents being treated fairly under neutral laws. Therefore, they support a neutral policy for allocating

chaplains and other resources in CDCR's religious programming. Ours is a country founded by religious minorities who believed that people of all faiths should be able to practice religion freely, and that the government should not favor any single religion over another. Martin Luther King, Jr., once wrote that "[i]njustice anywhere is a threat to justice everywhere."<sup>17</sup> Discrimination and oppression on the basis of religion affecting anyone is ultimately a threat to everyone.

## **II. WICCANS/PAGANS ARE IMPORTANT CONSTITUENCIES IN THE INTERFAITH COMMUNITY.**

America is a country rich with ethnic, religious and philosophical diversity. Over the years, this diversity has continued to expand, resulting in the emergence of a multitude of different faiths, all living in close proximity to one another. Because of the diversity of religious practices, it is essential that people from different religions be able to interact with one another and engage in an exchange of perspectives and ideas.

The interfaith community<sup>18</sup> is committed to facilitating dialogue and understanding between the faiths. Toward this end, several interfaith organizations around the world have formed, focusing their attention on ameliorating bias,

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<sup>17</sup> Martin Luther King, Jr., *Letter from Birmingham Jail*, in *The Autobiography of Martin Luther King, Jr.* 187, 189 (Clayborne Carson ed., 2001).

<sup>18</sup> The interfaith community consists of academic, scholarly, philosophical and religious communities who advocate tolerance, understanding and communication between the faiths.

discrimination and social stereotypes.<sup>19</sup> Fueled by an ethos of individual freedom and human dignity, these groups espouse a philosophy of tolerance, education and inclusiveness.<sup>20</sup>

The interfaith community recognizes that ours is a country founded by religious minorities on the belief that people of all faiths should be able to practice their religion freely, and it works to preserve this ideal. Discrimination against any one faith is a threat to all faiths. If the government is permitted to favor certain religions over others, religious diversity comes under assault. Wiccans/Pagans<sup>21</sup> embody the religious diversity that the interfaith community has an interest in protecting, and are valued members of the interfaith community.

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<sup>19</sup> Examples of interfaith organizations include the North American Interfaith Network, the American Academy of Religion and the Global Assembly of the United Religions Initiative. The interfaith community consists of and represents a diverse body of religion, including, but not limited to: Judaism, Christianity, Islam, Hinduism, Jainism, Baha'i, Buddhism, Sikhism and Wicca/Paganism. In acknowledgment and celebration of the shared space between these faiths and the benefits they derive from one another, interfaith organizations have banded together to promote awareness.

<sup>20</sup> The values espoused by the interfaith community are consistent with fundamental American values. *See generally* Barbara McGraw, *Rediscovering America's Sacred Ground: Public Religion and Pursuit of Good in a Pluralistic America* (2003).

<sup>21</sup> Neo-Paganism is a broad umbrella term referring to various denominations of Pagan revival religions. Wicca is one form of Neo-Paganism but not the only form. Thus the terms Wicca and Paganism are meant to be used interchangeably because one encompasses the other. Any reference to Neo-Paganism or Paganism must include Wicca as Wicca is a form of Paganism. Helen Berger, *A Community of Witches: Contemporary Neo-Paganism and Witchcraft in the United States* 10 (1999).

### **A. Wiccans/Pagans Are a Part of the General Population and of the Population in California Prisons.**

Wicca/Paganism shares many of the characteristics central to other religions.

Wiccans/Pagans believe in gods, goddesses, and other spiritual beings in the natural world.<sup>22</sup> Wiccans/Pagans follow ritual practices similar to other religions.<sup>23</sup>

Wiccans/Pagans highlight the centrality of the relationship between humans and nature, not unlike Native American religions.<sup>24</sup>

Wicca/Paganism is also much like other religions in that it has grown and branched off into different denominations in order to accommodate the diversity of its growing population.<sup>25</sup> The schisms that have produced these different

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<sup>22</sup> See Christopher Partridge, *Wicca, in A Guide to New Religions*, at 295, 296–97 (Christopher Partridge ed., 2004). Not all Wiccans/Pagans believe in multiple gods/goddess. Some believe in one “Ultimate Deity” that is worshiped as both a god and goddess to acknowledge both the male and female aspects of the one Ultimate Deity. Raymond Buckland, *Buckland’s Complete Book of Witchcraft* 14 (1996). Wiccans/Pagans believe in other spiritual entities as well, such as spirits and souls. *Id.* at 17.

<sup>23</sup> Wiccans/Pagans acknowledge eight main holidays or Sabbats to which Christian and Jewish holidays correspond. *Id.* at 67–73. Wiccans/Pagans also engage in religious expression through ritual in various forms throughout the year. Such rituals can take place publically at monthly gatherings, to mark an important event like marriage, to acknowledge a stage of life like birth or death, or they can take place privately for personal reasons. Sabina Magliocco, *Ritual is My Chosen Art Form: The Creation of Ritual as Folk Art Among Contemporary Pagans, in Magical Religion and Modern Witchcraft* 93, 96 (James R. Lewis ed., 1996).

<sup>24</sup> See Partridge, *supra* note 22, at 297.

<sup>25</sup> See *id.*; see also Andy Letcher, *Eco-Paganism: Protest Movement Spiritualities, in id.* at 300.

denominations are not unlike the schisms seen in other major world religions.

Wicca/Paganism has spread, divided and grown the way all religions do.

In the 1990s, there were approximately 150,000 to 300,000 practicing Wiccans/Pagans in America,<sup>26</sup> and the highest concentration of identified members was found in California.<sup>27</sup> Today, the number of practicing Wiccans/Pagans in America is estimated between 500,000 and one million.<sup>28</sup>

The growth of Wicca/Paganism also is reflected by the substantial number of inmates in the California prison system that identify as Wiccans/Pagans.

According to a 2002 survey, on average there were twice as many Wiccan/Pagan inmates than adherents to some other religions that are guaranteed chaplain positions.<sup>29</sup> Still, the Five Faiths Policy excludes Wicca/Paganism, along with all other non-Five Faith religions recognized and valued by the interfaith community.

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<sup>26</sup> See *Berger*, *supra* note 21, at 9

<sup>27</sup> *Id* at 10.

<sup>28</sup> Samuel G. Freedman, *Paganism, Just Another Religion for Military and Academia*, N.Y. Times, Oct. 31, 2009, at A13 (quoting Helen Berger), available at [http://www.nytimes.com/2009/10/31/us/31religion.html?\\_r=1](http://www.nytimes.com/2009/10/31/us/31religion.html?_r=1); see also Ontario Consultants on Religious Tolerance, How Many Wiccans Are There, [http://www.religioustolerance.org/wic\\_nbr3.htm](http://www.religioustolerance.org/wic_nbr3.htm) (last visited Nov. 17, 2009).

<sup>29</sup> See Declaration of Elaine Wallace in Support of Plaintiff McCollum's Notice of Motion and Motion for Summary Judgment on the Establishment of Claims at ex. 13, *McCollum v. California*, No. C 04-03339 CRB (N.D. Cal. Dec. 12, 2008).

## **B. Wiccans/Pagans Are Actively Involved in and Valued Members of Interfaith Organizations.**

Interfaith organizations around the world have embraced whole-heartedly Wicca/Paganism<sup>30</sup> as a religious community with a long history, a complex dogma and a diverse body of worship.<sup>31</sup> Wiccans/Pagans are considered full participants in interfaith dialogue.

For example, Wiccans/Pagans serve on a panel at one of the world's largest religious gatherings, the Parliament of the World's Religions.<sup>32</sup> The Parliament also currently has a Wiccan High Priestess and Pagan scholar serving as program director.<sup>33</sup> Founded in 1893, the Parliament calls upon people of all faiths to work

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<sup>30</sup> See The Covenant of the Goddess and the Interfaith Movement, <http://www.cog.org/interfaith/index.html> (last visited Nov. 16, 2009).

<sup>31</sup> See Aidan A. Kelly, *An Update on Neopagan Witchcraft in America*, in *Perspectives on the New Age* 136, 136-39 (James R. Lewis et al. eds., 1992). The demographics of the Wiccan/Pagan community also reflect a diverse membership. *Id.* at 145-46.

<sup>32</sup> Council for a Parliament of the World's Religions, What is the Parliament?, <http://www.parliamentofreligions.org/index.cfm?n=8&sn=12> (last visited Nov. 15, 2009) ("First held in Chicago in 1893, the Parliament of the World's religions brings together the world's religious and spiritual communities, their leaders and their followers to a gathering where peace, diversity and sustainability are discussed and explored in the context of interreligious understanding and cooperation.") [hereinafter CPWR, What is the Parliament?]. Every five years, the Parliament meets in various cities around the world. In 2009, over 10,000 members will meet at the parliament in Melbourne, Australia; this includes Wiccan/Pagan delegates. *Id.*

<sup>33</sup> See Council for a Parliament of the World's Religions, About Us: Chicago Staff, <http://www.parliamentofreligions.org/index.cfm?n=1&sn=5> (last visited Nov. 16, 2009). Ms. Grove Harris is a Wiccan high priestess and former managing director

together to promote peace and justice on a global scale. Among the Parliament's goals are to "foster interreligious, civil and cross-cultural dialogue on important local, national, and global issues", to have a "global appeal, covering social concerns including understanding and respecting diversity, peace and indigenous reconciliation" and to call upon "people of faith, spirit and goodwill to understand and respect differences."<sup>34</sup> Respect for, and inclusion of, all faiths, including Wicca/Paganism, is essential to achieving this end.

Wiccans/Pagans are also recognized members of several interfaith organizations such as the American Academy of Religion.<sup>35</sup> The American Academy of Religion (AAR) is a professional association comprised of over 10,000 teachers and scholars.<sup>36</sup> The AAR's stated purpose is "to encourage scholarship and research, to stimulate effective instruction, to promote publication

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of the Pluralism Project. *See* The Pluralism Project, Grove Harris, [http://pluralism.org/about/grove\\_bio.php](http://pluralism.org/about/grove_bio.php) (last visited Nov 16, 2009).

<sup>34</sup> CPWR, What is the Parliament?, *supra* note 32.

<sup>35</sup> There are many Wiccan/Pagan members of the American Academy of Religion. For example, Michael York, a respected scholar and pagan serves as chairman of the pagan studies group overseeing panel discussions at the AAR's annual meeting. Freedman, *supra* note 28. Representatives of the Circle Sanctuary, a Pagan group, are members of the American Academy of Religion. *See* The Circle Sanctuary, History of Circle Sanctuary, <http://www.circlesanctuary.org/aboutcircle> (last visited Nov. 15, 2009). In addition, the AAR includes a Contemporary Pagan Studies Group. *See* Contemporary Pagan Studies Group, AAR, [http://www.aarweb.org/Meetings/Annual\\_Meeting/Program\\_Units/PUinformation.asp?PUNum=AARPU139](http://www.aarweb.org/Meetings/Annual_Meeting/Program_Units/PUinformation.asp?PUNum=AARPU139) (last visited Nov. 24, 2009).

<sup>36</sup> *See* American Academy of Religion, Mission Statement, [http://www.aarweb.org/About\\_AAR/Mission\\_Statement/default.asp](http://www.aarweb.org/About_AAR/Mission_Statement/default.asp) (last visited Nov. 15, 2009).

in the field, and to encourage, develop and support the scholarly study of religion at all levels of education.”<sup>37</sup> A Wiccan (Grove Harris) serves on the Board of Directors of the North American Interfaith Network, an organization of interfaith councils across the U.S. and Canada.<sup>38</sup> Wicca was one of the founding religions of the United Religions Initiative, the world’s largest interfaith organization. A Wiccan (Don Frew) served on the first two elected Global Councils of the URI, and he continues to coordinate the URI’s Council of emeritus trustees.<sup>39</sup>

### **C. Wiccans/Pagans Comprise a Distinct and Recognized Religious Group in the United States.**

Wicca/Paganism is recognized as one of America’s religious traditions by interfaith organizations and The Pluralism Project.<sup>40</sup> Not unlike a Protestant denomination, Wicca comprises a subset of Pagans in the U.S.

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<sup>37</sup> See American Academy of Religion, Governance: By-Laws and Purpose Statement, [http://www.aarweb.org/About\\_AAR/Board\\_and\\_Governance/bylaws.asp#Art2](http://www.aarweb.org/About_AAR/Board_and_Governance/bylaws.asp#Art2) (last visited Nov. 15, 2009).

<sup>38</sup> See North American Interfaith Network, Members, <http://www.nain.org/directory.html> (follow “Click here for a list of current Membership Organizations” hyperlink) (last visited Nov. 16, 2009) (showing the Covenant of the Goddess as a member).

<sup>39</sup> See United Religions Initiative, Wicca and Nature Spirituality, <http://www.uri.org/index.php?option=content&task=view&id=70&Itemid=90> (last visited Nov 16, 2009).

<sup>40</sup> See The Pluralism Project at Harvard University, The Pluralism Project, Resources by Tradition, <http://www.pluralism.org/resources/tradition/index.php?trad=12> (last visited Nov. 15, 2009) (providing resources about Paganism as a religion). The Project’s stated mission is “to help Americans engage with the realities of religious diversity

Wicca/Paganism, along with other religions not included in CDCR's Five Faiths Policy, has also been officially recognized by the Department of Defense. In 2004, the U.S. Navy commissioned its first Buddhist Chaplain.<sup>41</sup> The military has also hired as chaplains Mormons, Quakers and Seventh Day Adventists,<sup>42</sup> all of which are excluded by CDCR's Five Faiths Policy. Since 1997, Pagan soldiers at Fort Hood have conducted Wiccan rituals with army approval.<sup>43</sup> Additionally, in a 2006 settlement agreement the Department of Veteran Affairs agreed to allow the gravestones of deceased Wiccan soldiers to be marked with Wiccan religious iconography.<sup>44</sup>

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through research, outreach, and the active dissemination of resources.” The Pluralism Project at Harvard University, Mission, <http://www.pluralism.com/about/mission> (last visited Nov. 16, 2009).

<sup>41</sup> Hendrick L. Dickson, *U.S. Navy Commissions Military's First Buddhist Chaplain*, Navy News Service, July 23, 2004, [http://www.navy.mil/search/display.asp?story\\_id=14398](http://www.navy.mil/search/display.asp?story_id=14398) (last visited Nov. 16, 2009).

<sup>42</sup> See Don Malin, *Military Chaplains and Religious Pluralism*, [http://www.wfial.org/index.cfm?fuseaction=artGeneral.article\\_6](http://www.wfial.org/index.cfm?fuseaction=artGeneral.article_6) (last visited Nov. 15, 2009).

<sup>43</sup> Washington Post, *National Close-Up: Wiccan Soldiers*, June 22, 1999, <http://www.washingtonpost.com/wp-srv/national/zforum/99/wicca062299.htm> (last visited Nov. 16, 2009).

<sup>44</sup> Settlement Agreement Stipulation of Dismissal, *Circle Sanctuary v. Nicholson*, No. 06-C-0660-S (W.D. Wis. Apr. 20, 2007), *available at* [http://members.au.org/site/DocServer/Pentacle\\_Executed\\_Settlement\\_Agreement.pdf?docID=1581](http://members.au.org/site/DocServer/Pentacle_Executed_Settlement_Agreement.pdf?docID=1581).

**D. Wiccans/Pagans are Considered Worthy of Academic Study and Considered Worthy Academic Colleagues Themselves.**

Interfaith organizations, the Pluralism Project, and the military are not the only fora to recognize the legitimacy of Wicca/Paganism; the academic and scholarly community also recognizes Wicca/Paganism as worthy of study. Several respected universities all include Wicca/Paganism as an area of study and as an integral part of a comprehensive religious studies program.<sup>45</sup> There are also seminaries that exist to train Wiccan/Pagan practitioners; examples of such schools include Cherry Hill Seminary, which trains students in professional Pagan ministry,<sup>46</sup> and Ardantane, a Pagan university located in New Mexico.<sup>47</sup>

Additionally, several on-line schools teach general Wicca, including The School of

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<sup>45</sup> For example, Wendy Griffin, Professor and Chair of the Women's Studies department at California State University in Long Beach, who teaches classes on modern religion – *see* Professor Giffirin's Classes, <http://www.csulb.edu/~wgriffin/courses/classes.html> (last visited Nov. 23, 2009) – has teamed with Chas Clifton, Professor of English at Colorado State University, to edit a book series entitled “Pagan Studies” for use in academic settings. *See* Pagan Studies, <http://www.csulb.edu/~wgriffin/paganstudies/index.htm> (last visited Nov. 23, 2009). Also, several universities publish academic journals on Neo-paganism. *See, e.g., The International Journal of Pagan Studies* (Chas Clifton, Colorado State University & Christopher Chase, Iowa State University ed.); *The Journal for the Study of Religion, Nature and Culture* (Bron Taylor University of Florida ed.).

<sup>46</sup> For more information about Cherry Hill Seminary, see Welcome to Cherry Hill Seminary, <http://www.cherryhillseminary.org> (last visited Nov. 15, 2009).

<sup>47</sup> For more information about Ardantane, see Ardantane, A Pagan Learning Center, <http://www.ardantane.org> (last visited Nov. 15, 2009).

Wicca (founded in 1968),<sup>48</sup> or focus on training practitioners in specific denominations such as the Dianic University founded by Z-Budapest.<sup>49</sup>

Universities are also increasingly making accommodations for their growing Wiccan/Pagan student bodies. For example, Wiccan/Pagan student groups have developed on various American university and college campuses.<sup>50</sup> Wiccan/Pagan faculty members frequently sponsor these student organizations.<sup>51</sup> In addition, Marshall University located in West Virginia has formally recognized the increase of Wiccan/Pagan students by altering the University attendance policy to reflect acknowledgment of Wiccan/Pagan religious holidays.<sup>52</sup>

Wicca has also been the focus of much study and debate in the scholarly community, as is true with any recognized religion.<sup>53</sup> The amount of scholarship

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<sup>48</sup> For more information about the Church and School of Wicca, see Welcome to The Church and School of Wicca's Homepage, <http://www.wicca.org> (last visited Nov. 15, 2009).

<sup>49</sup> See Dianic University Online, <http://wicca.dianic-wicca.com> (last visited Nov. 15, 2009). Zsuzsanna Budapest (Z-Budapest) and Morgan McFarland founded a feminist denomination of Wicca that focuses on the Goddess. See Partridge, *supra* note 22, at 297.

<sup>50</sup> Kelly, *supra* note 31, at 151.

<sup>51</sup> *Id.*

<sup>52</sup> *At a University in West Virginia, New Protections for Pagans*, N.Y. Times, Nov. 4, 2007, <http://www.nytimes.com/2007/11/04/us/04pagan.html> (last visited Nov. 15, 2009).

<sup>53</sup> See, e.g., Margot Adler, *Drawing Down the Moon: Witches, Druids, Goddess-Worshippers, and Other Pagans in America Today* (rev. ed. 2006); Chas S. Clifton, *What Has Alexandria to do with Boston? Some Sources of Modern Pagan Ethics in Magical Religion and Modern Witchcraft* (1996); Wendy Griffin, *Daughters of the Goddess* (2000); Ronald Hutton, *Triumph of the Moon: A History of Modern*

on the subject is vast and continues to grow as does the religion. The same recognition is afforded to Wicca in the academic and scholarly community as is given to other religious groups.

### CONCLUSION

For these reasons, the Court should conclude that the Five Faiths Policy is unconstitutional.

Dated: December 1, 2009

Respectfully submitted,

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*Pagan Witchcraft* (1999); Berger, *supra* note 21; Magliocco, *supra* note 23. These are just some of the scholars doing research in this area.

\* Pursuant to 9th Cir. R. 46-4, law student representation is limited to those *amici* whose authorization forms are on file with the Court.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,  
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Date: December 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on December 1, 2009.

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