

Important Minister's Housing Allowance Update

On Friday, November 22, Judge Barbara Crabb in the Western District of Wisconsin declared the minister's housing allowance unconstitutional in a case brought by the Freedom From Religion Foundation (FFRF). The decision may ultimately have a substantial financial impact on ministers and the churches and other ministries that employ them. The decision will certainly be appealed, however, and enforcement will be delayed until all appeals are final.

The decision did not affect the exemption from taxation of a church-provided parsonage. The court dismissed that challenge. The court did not, however, hold that the parsonage is constitutional. Rather, since the FFRF did not actually attempt to provide parsonages to its employees, the FFRF did not have standing to say its employees had been discriminated against. Consequently, for the time being there is no case challenging, or decision holding, that minister housing provided by churches (other organizations) must be taxed.

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The housing allowance was declared unconstitutional because it provides financial benefit based on religion, without showing how that has any secular purpose. Judge Crabb distinguished broadly based exemptions, quoting a prior U.S. Supreme Court decision:

Every tax exemption constitutes a subsidy that affects nonqualifying taxpayers, forcing them to become indirect and vicarious "donors." Insofar as that subsidy is conferred upon a wide array of nonsectarian groups as well as religious organizations in pursuit of some legitimate secular end, the fact that religious groups benefit incidentally does not deprive the subsidy of the secular purpose and primary effect mandated by the Establishment Clause.

Preferential treatment for religion may be needed in some situations, to protect it from other governmental burdens. Judge Crabb addressed this issue, also:

Although it is undoubtedly true that taxes impose a burden on ministers, the same is true for all taxpayers. Defendants [referring to the Federal Justice Department] do not identify any reason why a requirement on ministers to pay taxes on a housing allowance is more burdensome for them than for the many millions of others who must pay taxes on income used for housing expenses. In any event, the Supreme Court has rejected the view that the mere payment of a generally applicable tax may qualify as a substantial burden on free exercise.

The decision will undoubtedly be appealed. A Federal District Court is the lowest general purpose court in the federal court system. Its decisions may be appealed to the appropriate Circuit Court of Appeals, which in this case is the Seventh Circuit. A decision of the Seventh Circuit Court of Appeals may be appealed to the United States Supreme Court. It will be years before a final decision is made.

This court's ruling of unconstitutionality will not be enforced until the final appellate decision is issued.

It is important to note that:

1. The minister's housing allowance exclusion may continue, just as it has, for at least 2014 (and probably sometime beyond that, while the appeals are in process).
2. Ministers and organizations employing ministers should continue to monitor the decisions in this area.

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