News



The future of the "parsonage allowance exclusion" is in the hands of the courts. (RNS/Creative Commons)

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A federal court heard oral arguments this week on whether a longstanding housing tax break for clergy called a "parsonage allowance exclusion" is constitutional, setting the stage for a clash over competing claims of religious privilege and religious discrimination.

The Seventh Circuit Court of Appeals heard oral arguments on the case Oct. 24 as lawyers made pitches for and against an IRS provision that allows "ministers of the gospel" to exclude the cost of their housing when filing their taxes.

It's the latest chapter in the legal battle over the housing allowance, which dates back to the 1920s and originally applied only to clergy who lived in homes owned by churches or other religious groups. It was later applied to clergy who receive a cash allowance for their house.

Since 2002, the allowance has been capped at the fair rental value of the housing in question.

The Freedom from Religion Foundation filed suit over the housing allowance in 2011. The nonprofit organization claims the tax code allows clergy to take the tax break but excludes leaders of other nonprofits. That, the FFRF argues, is unconstitutional.

Wisconsin U.S. District Judge Barbara Crabb ruled in favor of the FFRF in 2013. The decision was overturned in 2014 when a higher court threw out the case on a technicality, arguing FFRF did not have standing because Gaylor its leaders had not filed a tax return that included a housing allowance or a claim for a refund after payment.

FFRF and other opponents of the tax break won a victory in October 2017, however, after FFRF refiled the case and Crabb again declared the tax break to be a violation of the establishment clause — the section of the U.S. Constitution that prohibits the establishment of religion. Two months later Crabb enjoined the Internal Revenue Service from enforcing it. The ruling was subsequently appealed in April, sending it to the Seventh Circuit.

"It's a subsidy for religion, a privilege for religion … and discriminatory toward us," said Annie Laurie Gaylor, FFRF co-president and one of the plaintiffs. "We are being

penalized, and the churches are being rewarded."

She added: "The government cannot discriminate against atheist leaders and reward religious leaders."

U.S. Department of Justice lawyers defended the provision on Wednesday, saying that doing away with the parsonage allowance exclusion would amount to religious discrimination, as similar provisions also exist for other kinds of workers such as college students and those working in the military or government.

"If the Congress were allowed to make these categorical exceptions for everyone but clergy, then it would look like discrimination against religion and they'd run into another problem," DOJ attorney Jesse Panuccio told the court on Wednesday, according to Law360.

Frank Sommerville, a Texas attorney who has tried numerous housing allowance cases, noted that tax terms such as "church" and "minister of the gospel" have long been interpreted as not being exclusive to one religion — or even necessarily to religious organizations. He also agreed that tossing out the provision could be seen as targeting religious groups.

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"It is taking a group that has historically been classified within the broader category of employer-provided and employer-assisted housing and saying, 'If you have religion in here, you get to be treated differently,'" he said, noting that the practice of providing housing to religious leaders dates back thousands of years.

Other groups have rushed to defend the provision as well.

After the Wisconsin decision against the measure, a group of more than 5,000 pastors signed on to an Alliance Defending Freedom letter defending the exemption in April. The Becket Fund For Religious Liberty also filed an amicus brief supporting the government's effort to protect the provision.

Gaylor, for her part, described supporters of the provision as relying on "alternative facts."

"A sailor who has to work at sea cannot be compared to a minister who gets to buy his home and choose to live wherever he jolly well likes," she said. "There are many people who would like or prefer to live near their workplaces who are not given this tax benefit."

Meanwhile, a group of professors specializing in tax law from institutions across the country — including schools with religious affiliations — submitted their own amicus brief in July backing the FFRF's position.

The issue could impact a number of faith leaders, including those who live in housing provided to them by the religious community they serve, which some Christian traditions refer to as parsonages or manses, but still have to take care of expenses in their living space.

According to Christianity Today, where Sommerville is an editorial advisor for a publication on church-related legal matters, 81 percent of full-time senior pastors in the U.S. receive a housing allowance.