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Church Alliance Files *Amicus* Brief in Clergy Housing Exclusion Case

Glenview IL—The Church Alliance—a coalition of the chief executive officers of 38 denominational benefit programs—has filed an *amicus curiae* brief in the Seventh Circuit U.S. Court of Appeals (Chicago) in the case challenging the constitutionality of the clergy housing exclusion under Section 107(2) of the Internal Revenue Code of 1986 (Code). A copy of the [Church Alliance brief](#) is linked.

The case is *Freedom From Religion Foundation, Inc., et al. v. Jacob Lew, et al. (FFRF v. Lew)*. The U.S. government is appealing a decision by Judge Barbara Crabb, U.S. District Court for the Western District of Wisconsin (November 2013) that Code §107(2) is unconstitutional.

Clergy Housing Exclusion

Code §107(2), commonly called “clergy housing exclusion” or “clergy housing allowance,” excludes from income taxation the cash compensation provided to “ministers of the gospel” (clergy) toward the cost of their housing. This section of the Code essentially excludes the value of clergy-owned housing from income taxation. It is related to Code §107(1), which excludes from a minister’s taxable income the value of church-provided housing (commonly called a parsonage, vicarage or manse). The *FFRF v. Lew* appeal does not involve a challenge to Code §107(1).

Judge Crabb ruled that Code §107(2) is unconstitutional because it violates the Establishment Clause of the First Amendment to the U.S. Constitution. Under the Establishment Clause, “Congress shall make no law respecting an establishment of religion... .” Judge Crabb stayed the effect of her ruling until all appeals are exhausted. The [government’s opening brief](#) was filed on April 2, 2014.

The Church Alliance brief adds a perspective not duplicated in the government’s brief, focusing on the jurisprudential history of permitted legislative accommodations of religion. The brief argues that Code §107(2) is a constitutionally permitted accommodation of religion when viewed in the context of Code §107(1), the parsonage exclusion, and Code §119, which excludes employer-provided housing from employees’ incomes in numerous secular circumstances.

Barbara Boigegrain, chief executive of the General Board of Pension and Health Benefits of The United Methodist Church and chair of the Church Alliance, said, “The Church Alliance has a substantial interest in the validity of Code §107(2) because of the immediate impact on compensation and housing of active clergy in the benefit plans of its member denominations, and also because of the indirect impact on retirement benefits.”

Religious Organizations Represented

The members of the Church Alliance stand with other religious organizations in their vested interest in the outcome of this litigation. The clergy housing exclusion is important to millions of active and retired clergy from the **38 Church Alliance-represented denominations**, including, among others, American Baptist Churches in the U.S.A., Church of the Nazarene, Christian Church (Disciples of Christ), Christian Brothers Services, Episcopal Church, Evangelical Lutheran Church in America, Joint Retirement Board for Conservative Judaism, Lutheran Church-Missouri Synod, Presbyterian Church (U.S.A.), Reform Pension Board, Southern Baptist Convention, United Church of Christ, and The United Methodist Church.

Numerous other churches, associations or conventions of churches, and other religious organizations with religious leaders eligible for the clergy housing exclusion under Code §107(2) are **additional signers of the brief**, supporting the filing of the Church Alliance’s brief and the positions advocated in it. They include the United States Conference of Catholic Bishops, Central Conference of American Rabbis, General Council on Finance and Administration of The United Methodist Church, Moravian Church, Rabbinical Assembly, Salvation Army, Union for Reform Judaism, United Synagogue of Conservative Judaism, and Wisconsin Council of Churches, among others.

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About the Church Alliance

The Church Alliance is a coalition of the chief executive officers of 38 church benefit programs. It includes mainline Protestant denominations, two branches of Judaism, and Catholic dioceses, schools and institutions. The benefit programs provide retirement and health benefits to more than 1 million clergy, lay workers, and their family members.

The Church Alliance was formed in 1975 as the “Church Alliance for Clarification of ERISA” to address the problems presented for established church plans by the Employment Retirement Income Security Act of 1974 (ERISA).

The Church Alliance advocated for changes to the church plan definitions in ERISA and the Code. As a result of these efforts, Congress revised the definition of “church plan” in both ERISA and the Code when it passed the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) to make clear that a church plan can provide retirement and welfare benefits to employees of all church agencies.

The Church Alliance continues to ensure that benefit-related legislative and regulatory initiatives fully address the unique nature of church plans. In addition, in some cases the Church Alliance has acted in a “self-regulatory” manner by advocating for changes that actually limited the tax rules and regulations that govern church benefit plans and clergy participants. As a result, over the years, the Church Alliance has been involved with numerous pieces of legislation (and legislative proposals) that directly impact church benefit plans and programs.

For more information: church-alliance.org