

December 9, 2013

A federal judge has ruled that an Internal Revenue Code exemption that allows clergy to shield a portion of their salary from federal income taxes, otherwise known as the housing allowance, is unconstitutional. This ruling does not impact clergy who are living in a parsonage; only those who receive a salary, a portion of which is designated as eligible for housing allowance.

The suit was filed by the Wisconsin-based Freedom from Religion Foundation on grounds that the housing allowance violates the separation of church and state and the constitutional guarantee of equal protection. The group's founders have said that if tax-exempt religious groups are allowed a housing subsidy, other tax-exempt groups, such as FFRF, should get one, too.

On Friday (Nov. 22), U.S. District Court Judge Barbara Crabb ruled in their favor, saying the exemption violated the establishment clause of the First Amendment. The judge concluded that the exemption "provides a benefit to religious persons and no one else, even though doing so is not necessary to alleviate a special burden on religious exercise."

The case, decided in the District Court for the Western District of Wisconsin, will likely be appealed to the Chicago-based U.S. Court of Appeals for the Seventh Circuit, which covers the states of Wisconsin, Illinois and Indiana.

The housing allowances of pastors in Wisconsin remain unaffected after Crabb stayed the ruling until all appeals are exhausted.

What is the impact of this ruling on clergy?

1. No immediate impact – While the judge ruled that the housing allowance is unconstitutional, she stayed her order until all appeals are exhausted. For the time being, nothing will change.
2. Appeals – As noted above, this case will likely be appealed to the 7<sup>th</sup> U.S. Circuit Court of Appeals, but it is too early to tell when that will happen, how quickly an appeal can be ruled on, and whether that ruling would then be appealed to the Supreme Court.
3. Congress – It is not clear that Congress will be able to do anything legislatively to alter the impact of this ruling.

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