

Contact: **Lisa Drew**
Managing Director, Communications
(847) 866-4111
ldrew@wespeth.org

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Church Alliance Files Clergy Housing Exclusion *Amicus* Brief

Glenview IL—The Church Alliance—a coalition of the chief executive officers of 38 denominational benefit programs—filed an [*amicus curiae*](#) brief in the Seventh Circuit U.S. Court of Appeals (Chicago), in the case challenging the constitutionality of the cash housing allowance exclusion for clergy.

The clergy housing allowance, commonly called “clergy housing exclusion,” stems from Internal Revenue Code Section 107(2). This Code section excludes the value of clergy-owned housing from income taxation.

In the case *Annie Laurie Gaylor, Freedom From Religion Foundation et al v. Steve Mnuchin et al.*, the federal district court for the Western District of Wisconsin declared the tax-free housing allowance for clergy under Code §107(2) unconstitutional. On **December 13, 2017**, the district court entered its final order in the case, which directs the government to cease enforcing Code §107(2). **However, the district court delayed the effect of the order until 180 days after the conclusion of all appeals.** The government appealed to the Seventh Circuit in February.

Barbara Boigegrain, chief executive of Wespeth Benefits and Investments (The United Methodist Church pension and health benefits board) and chair of the Church Alliance, said, “The Church Alliance’s mission is protecting the benefits of our covered clergy and retirees. This case has both direct and indirect impact on the compensation, retirement benefits and housing of clergy across religious traditions, making it a critical case for the Church Alliance to advocate on behalf of our participants.”

The Church Alliance brief adds a perspective that is 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 exclusion for in-kind clergy housing, e.g., parsonage or manse) and Code §119, which excludes employer-provided housing from employees’ incomes in numerous secular circumstances. In addition, the Church Alliance brief brings to the court’s attention the particularly strong reliance interests that would render a change in the law on this point inappropriate and unjust.

“For more than 60 years, ministers have arranged their financial affairs, such as buying housing and saving for retirement, in accordance with the tax rules established by Congress. If Code §107(2) is held unconstitutional, they will find their circumstances severely affected, and their hopes for an adequate retirement jeopardized,” added James Sanft, chief executive of Concordia Plan Services (the pension and benefits board of The Lutheran Church—Missouri Synod) and vice-chair of the Church Alliance.

In addition to the members of the Church Alliance, a broad ecumenical array of other religious organizations joined the brief, including among others, The United Methodist Church's General Council on Finance and Administration, the U.S. Conference of Catholic Bishops, The Church of Jesus Christ of Latter Day Saints, the Salvation Army, the Southern Baptist Ethics and Religious Liberty Commission, and numerous organizations affiliated with the Jewish Conservative Movement or the Jewish Reform Movement.

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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 and evangelical 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" when it passed the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). Under the revised MPPAA definition, a church plan could continue to 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