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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CIVIL DIVISION

FREEDOM FROM RELIGION FOUNDATION, INC.; PAUL STOREY; BILLY FERGUSON; KAREN BUCHANAN; JOSEPH MORROW; ANTHONY G. ARLEN; ELISABETH STEADMAN; CHARLES AND COLLETTE CRANNELL; MIKE OSBORNE; KRISTI CRAVEN; WILLIAM M. SHOCKLEY; PAUL ELLCESSOR; JOSEPH RITTELL; WENDY CORBY; PAT KELLEY; CAREY GOLDSTIEN; DEBORA SMITH; KATHY FIELDS; RICHARD MOORE; SUSAN ROBINSON; AND KEN NAHIGIAN,

Plaintiffs,

v.

TIMOTHY GEITHNER, in his official capacity as Secretary of the United States Department of the Treasury; DOUGLAS SHULMAN, in his official capacity as Commissioner of the Internal Revenue Service; and SELVI STANISLAUS, in her official capacity as Executive Officer of the California Franchise Tax Board,

Defendants.

Civil No. 2:09-CV-02894-WBS-DAD

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SELVI STANISLAUS' MOTION TO DISMISS

Date: May 10, 2010
Time: 1:00 p.m.
Courtroom: 5
Judge: The Hon. William B. Shubb
Trial Date: Net yet set.
Action Filed: October 16, 2010

I. INTRODUCTION.

Sections 17131.6 and 17280(d)(2) of the California Revenue and Taxation Code are taxing and spending measures under California law. These provisions of the Taxation Code violate the Establishment Clause because they provide preferential tax benefits to ministers, comparable to §§107 and 265(a)(6) of the Internal Revenue Code. Church ministers can pay virtually all of their housing costs with tax-free dollars, but other taxpayers, like the plaintiffs, do not receive these benefits.

The plaintiffs have standing to proceed in federal court to challenge state taxing and spending measures that favor religion, under Flast v. Cohen, 392 U.S. 83 (1968). The California Revenue and Taxation Code undisputedly was enacted pursuant to the taxing and spending authority of the California State Legislature, and the preferential tax breaks of §§17131.6 and 17280(d)(2) provide a much valued benefit to churches and ministers, which is not available to the plaintiff-taxpayers.

Preferential tax benefits provided to religion violate the Establishment Clause. The Supreme Court has consistently refused to allow government to preferentially favor religion with tax breaks that are not generally available to other taxpayers, as recognized in Texas Monthly v. Bullock, 489 U.S. 1 (1989).

Tax-free housing for ministers is not justifiable as an accommodation of religion, nor does the defendant Stanislaus make any fact-based argument that §§17131.6 and 17280(d)(2) were enacted to abate any perceived entanglement. Stanislaus makes a conclusory comment that these provisions are justified as accommodations to religion, but she provides no explanation as to how that is even theoretically the case. Stanislaus also advances no hint of evidence that the California Legislature acted with the purpose

or intent to accommodate a government-imposed burden on the free exercise rights of ministers.

Stanislaus does not dispute that the California Revenue and Taxation Code provides lucrative tax benefits to ministers that are not neutrally available to other taxpayers, as prohibited by the decision in Texas Monthly. Stanislaus, in fact, acknowledges that §17131.6 "creates a state tax exemption from gross income for a minister's home rental allowance that is analagous to the federal exemption created by §107(2)." (Stanislaus Memorandum at 4.) As discussed in Plaintiffs' Memorandum Opposing the United States' Motion to Dismiss, the income tax exemption for cash housing allowances paid to ministers is only available to clergy-taxpayers; no exemption is allowed to non-clergy taxpayers for cash housing allowances, even if provided for the "convenience of the employer."

Stanislaus similarly concedes that §17280(d)(2) "creates a mortgage interest and real property tax deduction for ministers without regard to whether the taxpayer receives a parsonage allowance that is excludable from gross income," comparable to the federal exemption provided by Internal Revenue Code §265(a)(6). (Stanislaus Memorandum at 4.) This deduction for mortgage interest and real estate taxes also is not available under California law to non-clergy taxpayers.

The plaintiffs incorporate herein the arguments from their Memorandum Opposing the United States' Motion to Dismiss, including arguments relating to taxpayer standing and arguments as to the unconstitutionality of preferential tax breaks for ministers. The plaintiffs also oppose Stanislaus' Motion to Dismiss for the additional reasons stated herein.

II. RELEVANT STATUTES.

The plaintiffs challenge California Revenue and Taxation Code §17131.6, which provides an exemption for cash housing allowances paid by churches to ministers of the gospel. This Code provision creates a state tax exemption that is analagous to the federal exemption created by Internal Revenue Code §107(2). The exemption for cash housing allowances is provided only to ministers.

The plaintiffs further challenge §17280(d)(2) of the California Revenue and Taxation Code, which allows ministers to deduct mortgage interest and real estate taxes from their taxable income when the interest is paid with a housing allowance that is already tax-exempt. Other taxpayers cannot deduct mortgage interest and real estate taxes paid with tax-exempt income.

III. SOVEREIGN IMMUNITY DOES NOT BAR PLAINTIFFS' CLAIM FOR PROSPECTIVE INJUNCTIVE RELIEF.

Stanislaus mistakenly claims sovereign immunity as a bar to plaintiffs' claims. She ignores that the plaintiffs seek prospective injunctive relief against a continuing violation of the United States Constitution, which claims are not barred by sovereign immunity.

Stanislaus acknowledges in her "Statement Of The Case" that "by their Complaint, Plaintiffs seek declaratory and injunctive relief against Stanislaus on the grounds that her enforcement of §§17131.6 and 17280(d)(2) constitutes a continuing violation of federal law." (Stanislaus Memorandum at 3.) Stanislaus further recognizes that plaintiffs allege that her enforcement of the referenced California Statutes violates "the Establishment Clause of the First Amendment to the United States Constitution and . . . the Establishment Clause of the California Constitution and the No Aid Provision of the California Constitution." (Stanislaus Memorandum at 3.)

Although the Eleventh Amendment generally prohibits suits against states in both law and equity, a plaintiff may nonetheless maintain a federal action to compel a state official's prospective compliance with federal law. Independent Living Center of Southern California v. Maxwell-Jolly, 572 F.3d 644, 660 (9th Cir. 2009), citing Ex parte Young, 209 U.S. 123, 156 (1908). In Ex parte Young, the Supreme Court concluded that "the State has no power to empart to [its officer] any immunity from responsibility to the supreme authority of the United States." Id at 160. See also Quern v. Jordan, 440 U.S. 332, 337 (1979). As a result, a court may enter an injunction "even if the state's compliance will have an ancillary effect on the state treasury." Independent Living, 572 F.3d at 660.

The Ex parte Young exception to sovereign immunity applies to suits "seeking injunctive relief against state officers to force them to adhere to the Constitution." Seven Up Pete Venture v. Schweitzer, 523 F.3d 948, 956 (9th Cir. 2008). The applicability of the Ex parte Young exception turns on whether the plaintiffs' actions seek prospective relief. "In determining whether the doctrine of Ex parte Young avoids an Eleventh Amendment bar to suit, a court need conduct only a straightforward inquiry into whether the complaint (1) alleges an ongoing violation of federal law; and (2) seeks relief properly characterized as prospective." Id, quoting Verizon Md., Inc. v. Public Service Commission, 535 U.S. 635, 645 (2002).

The Ex parte Young exception to sovereign immunity applies to suits against state officials in their official capacity, such as in this case. "Sovereign immunity does not bar suits for prospective injunctive relief against individual state officials acting in their official capacity." Pittman v. Oregon, 509 F.3d 1065, 1071 (9th Cir. 2007). See also

Hydrick v. Hunter, 500 F.3d 978, 986-987 (9th Cir. 2007) (suits for injunctive or declaratory relief do not violate the Eleventh Amendment under Ex parte Young).

IV. THE PLAINTIFFS HAVE STANDING TO CHALLENGE TAX BREAKS THAT ARE PREFERENTIALLY PROVIDED TO MINISTERS OF THE GOSPEL AND WHICH ARE NOT NEUTRALLY AND GENERALLY AVAILABLE TO OTHER TAXPAYERS, INCLUDING THE PLAINTIFFS.

Stanislaus argues simply that the plaintiffs lack taxpayer standing because their Complaint allegedly is "devoid of any allegation of an expenditure of public funds sufficiently related to their constitutional claims." (Stanislaus Memorandum at 9.) Stanislaus relies upon the Ninth Circuit's decision from 1991 in Cammack v. Waihee, 932 F.2d 765 (9th Cir. 1991), holding that state and municipal taxpayers have standing to challenge the expenditure of tax revenues on paid leave days for the Good Friday holiday.

The Cammack decision does not preclude standing in this case, as made clear by more recent Ninth Circuit decisions. In Winn v. Arizona Christian School Tuition Organization, 562 F.3d 1002 (9th Cir. 2009), the Ninth Circuit expressly recognized that tax exemptions, deductions, credits, etc., effectively operate as religious subsidies every bit as much as direct grants. Although Stanislaus ignores the Winn decision, its rationale is nonetheless compelling.

The principles governing state taxpayer standing are the same as for determining federal taxpayer standing. See Daimler Chrysler Corp. v. Cuno, 547 U.S. 332 (2006). See also Arakaki v. Lingle, 477 F.3d 1048, 1062 (9th Cir. 2007). Under the general rule applicable to both state and federal taxpayer suits, individuals generally do not have standing solely because they are taxpayers. Winn, 562 F.3d at 1008. The Supreme

Court, however, has long recognized an exception to the general rule when a plaintiff contends that legislative taxing and spending measures violate the Establishment Clause.

The Winn decision supports plaintiffs' standing to challenge Tax Code infirmities. The Ninth Circuit held in Winn that "because plaintiffs have alleged that the State has used its tax and spending power to advance religion in violation of the Establishment Clause, we hold that they have standing under Article III to challenge the application of Section 1089 [legislative tax credit measure]." Id at 1008. The Court rejected claims that a tax credit program does not involve any "expenditure" of public funds. The Winn court rejected this argument based on reasoning relevant to the present case:

> The Supreme Court has recognized that State tax policies such as tax deductions, tax exemptions and tax credits are means of channeling state assistance to private organizations, which can have an economic effect comparable to that of aid given directly to the organization. Mueller v. Allen, 463 U.S. 388, 399, 103 S. Ct. 3062, 77 L. Ed. 2d 721 (1983). The Court has therefore refused to make artificial distinctions between grants to religious organizations and tax programs that confer special benefits on religious organizations, particularly tax credits such as the one challenged here. As the Court noted, "for purposes of determining whether such aid has the effect of advancing religion," it makes no difference whether the qualifying individual "receives an actual cash payment . . . or is allowed to reduce . . . the sum he would otherwise be obliged to pay over to the state." Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 790-91 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973). In either case, "the money involved represents a charge made upon the state for the purpose of religious education." Id at 791.

The Ninth Circuit further recognized in Winn that "the Supreme Court has repeatedly decided Establishment Clause challenges brought by state taxpayers against state tax credits, tax deductions and tax exemption policies, without ever suggesting that such taxpayers lacked Article III standing." Winn, 562 F.3d at 1010. By contrast, Stanislaus argues against taxpayer standing by making artificial distinctions that ignore economic reality. Her arguments, in short, are at odds with the controlling principles of taxpayer standing applicable to this case. For these reasons, as well as those stated in the

Plaintiffs' Memorandum Opposing the Motion to Dismiss by the United States, Stanislaus' argument against standing is misplaced in this case.

In fact, the Supreme Court itself did not question taxpayer standing when the Winn case previously went before the Court to consider whether the Tax Injunction Act otherwise barred taxpayer actions challenging preferential tax credits. In Hibbs v. Winn, 542 U.S. 88, 108 (2004), the Court concluded that the Tax Injunction Act restrains "state taxpayers from instituting federal actions to contest their liability for state taxes, but does not stop third parties from pursuing constitutional challenges to state benefits in a federal forum."

The Supreme Court concluded that the Tax Injunction Act did not deprive federal courts of jurisdiction when the proposed relief would increase state tax revenue. The Supreme Court, therefore, affirmed the Ninth Circuit decision in Hibbs, reasoning that the Tax Injunction Act does not deprive federal courts of jurisdiction because the state fisc would not be diminished. The Court concluded that the Tax Injunction Act only applies when a taxpayer seeks to avoid paying taxes. In Hibbs, however, no party sought to avoid paying taxes -- the plaintiff-taxpayers instead were seeking to end a tax credit given to other taxpayers who made certain charitable donations. The Court found nothing questionable about the plaintiffs' taxpayer standing.

Similar to Hibbs, the present case involves taxpayers seeking to end preferential tax benefits provided to ministers. Under California Revenue and Taxation Code §17131.6, churches can designate compensation paid to ministers as a housing allowance, just like under §107(2) of the Internal Revenue Code. As a result of that designation, ministers performing religious services receive an income tax exemption, which reduces the amount of taxes that they owe to the State. This tax break is available preferentially

to ministers; it is not available to non-clergy, including the plaintiffs, who seek an end to California's preferential treatment of clergy compensation.

The plaintiffs have standing under the reasoning of Flast. California's tax preferences for ministers were enacted pursuant to legislative authority analogous to Congress' taxing and spending authority under Article I, §8. The plaintiffs also allege that California's tax preferences for ministers violate a specific constitutional limitation, i.e., the Establishment Clause. A clear nexus exists between the plaintiffs' taxpayer status and the preferences embedded in the California Revenue and Taxation Code. The plaintiffs have standing, therefore, to object to Code preferences favoring religion.

V. SECTIONS 17131.6 AND 17280(d)(2) VIOLATE THE ESTABLISHMENT CLAUSE BECAUSE THEY ARE NOT NEUTRAL AND THEY PROVIDE LUCRATIVE TAX BENEFITS EXCLUSIVELY TO MINISTERS OF THE GOSPEL.

Stanislaus concedes that §§17131.6 and 17280(d)(2) provide lucrative benefits to ministers that are not neutrally available to other taxpayers. For the reasons discussed in Plaintiffs' Memorandum in Opposition to United States' Motion to Dismiss, incorporated herein, these Tax Code preferences violate the Establishment Clause. The plaintiffs further address in this Memorandum additional errors and omissions in Stanislaus' arguments.

1. First, Stanislaus incorrectly argues that the tax benefits at issue in this case "remove a burden on religious practice by providing a tax exemption and deduction, respectively, not a subsidy." (Stanislaus Memorandum at 10.) She also states that "the tax exemption and tax deduction, respectively, created by §§17131.6 and 17280(d)(2), like the challenged statutory exemption in Corporation of the Presiding Bishop, remove a burden from the exercise of religion." (Stanislaus Memorandum at 11.) Significantly,

Stanislaus does not describe or even characterize the burden supposedly removed by §§17131.6 and 17280(d)(2).

Stanislaus cannot identify any such burden because the exemption for cash housing allowances provided by §17131.6 is a benefit allowed only to ministers -- non-clergy taxpayers do not get this exemption. The exemption for cash housing allowances, therefore, does not abate any burden, except the general obligation to otherwise pay income tax, which Stanislaus does not argue to be impermissible as applied to ministers. Section 17131.6, nonetheless, only allows an exemption for ministers providing inherently religious services, such as the performance of sacerdotal functions; the conduct of religious worship; and the performance of teaching and administrative duties at theological seminaries. The exemption provided to ministers is available only to those most actively and integrally involved in performing fundamental religious services; it does not correspond to any non-discriminatory exemption for non-clergy.

Section 17280(d)(2) also provides a tax deduction for mortgage interest and real estate taxes paid from otherwise tax-exempt income, which also is a benefit not available to other taxpayers. Stanislaus, again, does not offer any explanation as to why or how this preferential deduction "removes a burden on religious practice."

Stanislaus also makes no claim and offers no evidence that the California Legislature actually adopted §§17131.6 and 17280(d)(2) in order to "remove a burden from the exercise of religion." Stanislaus relies solely on her stated conclusion about the Legislature's alleged intent, but her *post hoc* justifications lack any factual substance.

2. Stanislaus also claims that providing preferential tax exemptions and deductions to ministers can never constitute violations of the Establishment Clause because they are not a "direct subsidy." As the Ninth Circuit recognized in Winn,

however, tax exemptions, deductions and credits operate like direct subsidies by providing benefits to targeted recipients, and the Supreme Court has consistently ruled on the merits of challenges to such benefits. The Court also has invalidated preferential exemptions, as in Texas Monthly.

3. Stanislaus further claims that because "the challenged California Statutes provide a tax exemption and tax deduction for ministers of any religion, they do not discriminate among religions and thus avoid excessive entanglement with religion." (Stanislaus Memorandum at 12.) In fact, however, even the opinion by the California State Board of Equalization in Kurtaneck, cited by Stanislaus, confirms the fact that entanglement is necessary to determine whether a minister qualifies for an exemption under §§17131.6 and 17280(d)(2). The Kurtaneck opinion, like Tax Court opinions construing §107(2) of the Internal Revenue Code, emphasizes the religious-sensitive inquiries necessary to limit the scope of the benefit to intended religious figures.

4. Stanislaus argues implausibly that the inquiries under §17131.6 and 17280(d)(2) minimize government entanglement, like the property tax exemption in Walz and the exemption from civil rights regulatory statutes in Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 43 U.S. 327 (1987). Unlike Walz and Amos, where exemptions arguably did minimize complex religious inquiries, the tax preferences at issue in this case do not abate any regulatory burden, but rather impose intrusive inquiries in order to limit tax preferences to religious clergy providing services in furtherance of their ministry. California's preferential exemption and deduction for ministers increases entanglement.

Sections 17131.6 and 17280(d)(2), in short, were not enacted in order to remove any burden on the free exercise of religion; they preferentially provide tax benefits to

ministers that are not available to non-clergy taxpayers; and they increase the need for government entanglement in order to make sure that preferential tax benefits are only allowed to those taxpayers engaged in spreading a religious message. As the Supreme Court similarly held in Texas Monthly, therefore, California's preferential tax benefits to ministers clearly violate the Establishment Clause.

VI. PREFERENTIAL TAX BREAKS FOR MINISTERS VIOLATE THE "NO PREFERENCE" CLAUSE OF THE CALIFORNIA CONSTITUTION.

The protections of Article I, §4, of the California Constitution, concerning the establishment of religion, are comparable to those of the Establishment Clause of the First Amendment to the United States Constitution. Paulson v. Abdelnour, 145 Cal. App. 4th 400, 420 (2007). For the same reasons that §§17131.6 and 17280(d)(2) of the California Revenue and Taxation Code violate the Establishment Clause of the United States Constitution, therefore, these statutes also violate the "no preference clause" of the California Constitution.

Stanislaus repeats as her sole argument against the "no preference" claim that §§17131.6 and 17280(d)(2) constitute proper accommodations to relieve ministers of a burden on their Free Exercise rights. Again, however, Stanislaus does not identify any supposed burden on Free Exercise rights, nor does she identify any basis for concluding that the California Legislature perceived any burden when enacting §§17131.6 and 17280(d)(2).

The California Supreme Court's decision in East Bay Asian Local Development Corporation v. California, 13 P.3d 1122 (Cal. 2000), does not support Stanislaus' accommodation argument, in any event. In East Bay, the California Supreme Court upheld a religious exemption from California's Historic Landmark Designation Law, a

regulatory enactment. That legislation, like the employment legislation in Amos, constituted a patently regulatory law, unlike the tax preferences at issue in this case. The Supreme Court's analysis in East Bay, nonetheless, is instructive in its emphasis that a burden must be abated to justify a claimed accommodation.

The California Supreme Court construed the Lemon test to be aimed at preserving governmental neutrality in religious matters. Therefore, under the Lemon analysis, it "is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions." Id at 1131, quoting Amos, 43 U.S. at 335. Only where government acts with the proper purpose of "lifting a regulation that burdens the exercise of religion," may an accommodation be acceptable. East Bay, 13 P.2d at 1131, quoting Amos, 483 U.S. at 338.

Notably, the California Supreme Court also recognized from Texas Monthly that the tax exemption there "violated the Establishment Clause of the First Amendment because there was no actual burden on Free Exercise rights and no concrete need to accommodate religious activity." East Bay, 13 P.3d at 1131, quoting Texas Monthly, 489 U.S. at 18. The California Supreme Court further noted Justice Brennan's emphasis in Texas Monthly on the fact that the tax exemption had the effect of subsidizing religion in the distribution of religious messages. "When government directs a subsidy exclusively to religious organizations that is not required by the Free Exercise Clause, which burdens non-beneficiaries markedly or cannot reasonably be seen as removing a significant state-imposed deterrent to the free exercise of religion . . . it provides unjustifiable awards of assistance to religious organizations and cannot but convey a message of endorsement to

slighted members of the community." East Bay, 13 P.3d at 1132, quoting Texas Monthly, 489 U.S. at 15.

Finally, the California Supreme Court also noted the distinction between regulatory legislation and the tax exemption at issue in Texas Monthly. Unlike the tax exemption considered by the Court in Texas Monthly, "exempting a property from landmark status does not have the effect of subsidizing the owner at the expense of other owners of landmarked property." East Bay, 13 P.3d at 1135. By contrast, "the subsidy to which the Court referred in Texas Monthly was one that necessarily resulted from a tax exemption -- the need to offset the lost revenue through higher taxes on the non-exempt class." East Bay, 13 P.3d at 1136.

Here, the preferential tax benefits at issue do not abate any substantial government burden on Free Exercise rights, while positively subsidizing ministers for the performance of services within the scope of their ministry. California's general income tax law, moreover, certainly does not substantially burden ministers and, in fact, a religious objector has no constitutional right to an exemption from such a neutral and valid law of general applicability. North Coast Women's Care Medical Group v. Superior Court of San Diego County, 189 P.3d 959, 966 (Cal. 2008).

The tax exemption and tax deduction at issue do not relieve any substantial burden on Free Exercise rights, but rather provide affirmative benefits to ministers that are not available to other taxpayers. These benefits have the effect of subsidizing ministers of the gospel, which preference "violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the Government's ostensible object is to take sides." California Statewide Community's Development Authority v. All Persons Interested in the Matter of the Validity of a Purchase

Agreement, 152 P.3d 1070, 1082 (Cal. 2007), quoting McCreary County v. American Civil Liberties Union of Kentucky, 545 U.S. 844, 860 (2005).

The tax preferences to ministers under §§17131.6 and 17280(d)(2) are not neutral, nor are they generally available to other taxpayers. The tax benefits provided to ministers, moreover, do not abate any substantial government burden on Free Exercise rights, nor did the California Legislature enact such preferences for that purpose. The exclusive tax exemption for cash housing allowances paid to ministers, as well as the deduction for mortgage interest and real estate property taxes, in short, violate the "no preference" Clause of the California Constitution, as well as the Establishment Clause of the United States Constitution.

VII. SECTIONS 17131.6 AND 17280(d)(2) VIOLATE THE "NO AID" PROVISION OF THE CALIFORNIA CONSTITUTION.

Article XVI, §5, of the California Constitution prohibits any Government enactments that have the substantial effect of promoting religion. California Educational Facilities Authority v. Priest, 526 P.2d 513 (1974). Article XVI, §5, prohibits not only direct appropriation or expenditure of public funds to support religion, but also forbids granting anything to or in aid of religion. Id.

The preferential tax benefits provided exclusively to ministers of the gospel by §§17131.6 and 17280(d)(2) undisputedly provide aid to religion. The tax breaks at issue provide lucrative financial benefits to ministers that are not available to non-clergy taxpayers. The aid provided to ministers, moreover, is targeted exclusively to clergy compensation for services performed as part of a minister's ministry, such as performing sacerdotal and religious ceremonies.

Stanislaus unpersuasively claims that preferential tax benefits to ministers constitute only indirect and incidental benefits to religion that do not violate Article XVI,

§5. In fact, however, the intended and direct beneficiaries of the tax benefits at issue are ministers of the gospel. There is nothing indirect about these benefits. The tax exemption and deduction provided exclusively to ministers provide benefits that are not avaialble to non-clergy taxpayers -- and they do not abate any burden on Free Exercise rights.

Sections 17131.6 and 17280(d)(2) constitute clear and unambiguous aid to ministers of the gospel in violation of Article XVI, §5, of the California Constitution. These tax benefits are provided only to ministers. The tax benefits are limited to compensation paid for performing inherently religious services. As a result, California is actively subsidizing religion in preference to non-religion. California has impermissibly "taken sides" in favor of religion.

Dated this 23rd day of April, 2010.

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