

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION)	
FOUNDATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 12-CV-818
)	
JOHN KOSKINEN, COMMISSIONER OF)	
THE INTERNAL REVENUE SERVICE,)	
)	
Defendant)	
)	
and)	
)	
HOLY CROSS ANGLICAN CHURCH,)	
FATHER PATRICK MALONE)	
)	
Intervenor Defendants.)	
)	

JOINT MOTION FOR DISMISSAL

Plaintiff, Freedom From Religion Foundation, Inc. (“FFRF”), and the defendant, John Koskinen, Commissioner of the Internal Revenue Service, by and through their undersigned attorneys, respectfully submit this Motion for Dismissal, pursuant to Fed R. Civ. P. 41(a)(2).

On November 14, 2012, plaintiff filed its complaint against the defendant, Commissioner of the Internal Revenue Service. (Docket No. 1.) The defendant answered the complaint on August 27, 2013. (Docket No. 18.) Holy Cross Anglican Church and Father Patrick Malone moved to intervene in this this litigation as defendants. (Docket No. 25.) On February 3, 2014, the Court granted the motion to intervene, but noted that Holy Cross Anglican Church and Father Patrick Malone proposed to intervene as defendants on the side of the IRS, brought no claims against the IRS or FFRF, and would have no basis to advance their legal arguments if FFRF’s claims did not go forward. (Docket No. 33.)

On July 2, 2014, FFRF requested both the defendant and the intervenor defendants to concur in a stipulation of dismissal without prejudiced, pursuant to Fed R. Civ. P. 41(a)(1). Despite numerous attempts by FFRF and the defendant to obtain their consent to such a dismissal by stipulation, the intervenor defendants have withheld their consent, insisting on further discovery and dismissal with prejudice.

ARGUMENT

Pursuant to Rule 41(a)(2), a plaintiff may have its action dismissed upon request by order of the Court. Pursuant to Rule 41(a)(2), FFRF and the defendant jointly and respectfully request that the Court enter an order dismissing FFRF's complaint (Docket No. 1.) without prejudice, with each party to bear its own costs, expenses and attorneys' fees.

The Court should grant this joint motion for dismissal and do so over the intervenor defendants' apparent objection. In permitting intervention in this case, the Court stated that the intervenor defendants were "intervening for the purpose of preventing [FFRF] from obtaining relief against the IRS that would be inconsistent with their argument that the IRS may not enforce the electioneering restrictions of § 501(c)(3) against them." (Docket No. 33 at 4-5.) According to the Court, "unless [FFRF] is able to prove that the IRS has a policy of not enforcing the electioneering restrictions against churches and religious organizations, the [intervenor defendants] will have no occasion to advance their legal arguments." (*Id.* at 5-6.) The Court summarized that, "if the IRS succeeds in showing that it does not have a policy against enforcing § 501(c)(3)'s electioneering restrictions against churches and religious organizations, *the case will be over and the movants will have nothing to do.* Still, this does not mean that the movants cannot intervene now and wait on the sidelines *in case there comes a time in the suit when their legal interests require protection.*" (*Id.* at 6.) Here, FFRF is

satisfied that the IRS does not have a policy at this time of non-enforcement specific to churches and religious organizations.

FFRF's request for dismissal of its complaint makes clear that this case no longer poses any risks to the intervenor defendants' legal interests – and the protection of those interests formed the primary basis for the Court's decision to permit intervention in the first place. Indeed, the intervenor defendants have no independent claim in this case and, as a result, the intervenor defendants face no risk that FFRF will obtain relief in this case that is inconsistent with the intervenor defendants' position regarding the constitutionality of the political activity restrictions in § 501(c)(3). In sum, the intervenor defendants, who have no independent claim in this case, should not be allowed to obstruct dismissal, which is an otherwise efficient and expeditious resolution of this matter.

CONCLUSION

Pursuant to Rule 41(a)(2), FFRF and the defendant jointly and respectfully request that the Court enter an order dismissing FFRF's complaint (Docket No. 1.) without prejudice, with each party to bear its own costs, expenses and attorneys' fees.

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Dated: July 17, 2014

Respectfully submitted,

s/ Richard L. Bolton
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2014, I caused the foregoing JOINT MOTION FOR DISMISSAL was made upon all parties by filing it with the Clerk of Court using the CM/ECF system.

s/ Richard G. Rose
RICHARD G. ROSE