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11  
12 IN THE UNITED STATES DISTRICT COURT  
13  
14 FOR THE EASTERN DISTRICT OF CALIFORNIA  
15  
16 CIVIL DIVISION

17  
18 FREEDOM FROM RELIGION ) Civil No. 2:09-CV-02894-WBS-DAD  
19 FOUNDATION, INC.; PAUL STOREY; )  
20 BILLY FERGUSON; KAREN )  
21 BUCHANAN; JOSEPH MORROW; ) **AMENDED COMPLAINT**  
22 ANTHONY G. ARLEN; ELISABETH ) **FOR DECLARATORY AND**  
23 STEADMAN; CHARLES AND ) **INJUNCTIVE RELIEF**  
24 COLLETTE CRANNELL; MIKE )  
25 OSBORNE; KRISTI CRAVEN; )  
26 WILLIAM M. SHOCKLEY; )  
27 PAUL ELLCESSOR; JOSEPH RITTELL; ) Pretrial Scheduling  
28 WENDY CORBY; PAT KELLEY; ) Conference Date: June 28, 2010  
29 CAREY GOLDSTIEN; DEBORA SMITH; ) Time: 2:00 p.m.  
30 KATHY FIELDS; RICHARD MOORE; ) Courtroom: 31  
31 SUSAN ROBINSON; AND ) Judge: The Hon. William B. Shubb  
32 KEN NAHIGIAN, )

33 )  
34 Plaintiffs, )  
35 )

36 v. )  
37 )

38 TIMOTHY GEITHNER, in his official )  
39 capacity as Secretary of the United States )  
40 Department of the Treasury; DOUGLAS )  
41 SHULMAN, in his official capacity as )  
42 Commissioner of the Internal Revenue )  
43 Service; and SELVI STANISLAUS, in her )  
44 official capacity as Executive Officer of )  
45 the California Franchise Tax Board, )

46 )  
47 Defendants. )  
48 )

1 The Plaintiffs, as their Complaint against the Defendants, allege as follows:

2 **NATURE OF THE CLAIMS**

3 1. The Plaintiffs seek a declaration under 28 U.S.C. § 2201 that 26 U.S.C.  
4 §§107 and 265(a)(6), both on their face and as administered by the Internal Revenue  
5 Service ("IRS") and the Department of the Treasury ("Treasury"), violate the  
6 Establishment Clause of the First Amendment to the Constitution of the United States by  
7 providing preferential tax benefits to ministers of the gospel. Plaintiffs request that the  
8 Court enjoin any allowance or grant of tax benefits for ministers of the gospel under  
9 §§107 and 265(a)(6).

10 **JURISDICTION AND VENUE**

11 2. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331  
12 with respect to the relief sought against all defendants. In addition, this Court has  
13 jurisdiction pursuant to 28 U.S.C. §§ 1343(a)(3) with respect to the relief sought against  
14 defendant Selvi Stanislaus. The Court also has the authority to issue a declaratory  
15 judgment under 28 U.S.C. § 2201. The Court further has the authority to award  
16 injunctive relief under 28 U.S.C. § 1343 and Fed. R. Civ. P. 65.

17 3. The challenged provisions of the Revenue Code were enacted pursuant to  
18 the power granted to Congress by Article I, Section 8 of the United States Constitution.

19 4. The plaintiffs are federal taxpayers who object to the allowance of  
20 preferential tax benefits under the Revenue Code, as enacted pursuant to Article I,  
21 Section 8 of the United States Constitution.

22 5. Venue is appropriate in the District Court for the Eastern District of  
23 California, pursuant to 28 U.S.C. §1391(e).

**PARTIES**

1  
2           6.       The plaintiff, Freedom From Religion Foundation, Inc. ("FFRF"), is a  
3 non-profit membership organization that advocates for the separation of church and state  
4 and educates on matters of non-theism. FFRF has more than 13,900 members, in every  
5 state of the United States, including more than 2,200 members in the State of California.

6           7.       FFRF represents and advocates on behalf of its members throughout the  
7 United States.

8           8.       FFRF's membership includes individuals who are federal and California  
9 taxpayers residing in the Eastern District of California, and who are opposed to  
10 government endorsement of religion.

11           9.       The plaintiff, Paul Storey, is an adult individual who is a member of FFRF  
12 and a federal and California taxpayer who resides in the Eastern District of California; he  
13 is opposed to government endorsement of religion, including preferential and exclusive  
14 tax benefits for religious organizations and ministers of the gospel.

15           10.      The plaintiff, Billy Ferguson, is an adult individual who is a member of  
16 FFRF and a federal and California taxpayer who resides in the Eastern District of  
17 California; he is opposed to government endorsement of religion, including preferential  
18 and exclusive tax benefits for religious organizations and ministers of the gospel.

19           11.      The plaintiff, Karen Buchanan, is an adult individual who is a member of  
20 FFRF and a federal and California taxpayer who resides in the Eastern District of  
21 California; she is opposed to government endorsement of religion, including preferential  
22 and exclusive tax benefits for religious organizations and ministers of the gospel.

23           12.      The plaintiff, Joseph Morrow, is an adult individual who is a member of  
24 FFRF and a federal and California taxpayer who resides in the Eastern District of

1 California; he is opposed to government endorsement of religion, including preferential  
2 and exclusive tax benefits for religious organizations and ministers of the gospel.

3 13. The plaintiff, Anthony G. Arlen, is an adult individual who is a member of  
4 FFRF and a federal and California taxpayer who resides in the Eastern District of  
5 California; he is opposed to government endorsement of religion, including preferential  
6 and exclusive tax benefits for religious organizations and ministers of the gospel.

7 14. The plaintiff, Elisabeth Steadman, is an adult individual who is a member  
8 of FFRF and a federal and California taxpayer who resides in the Eastern District of  
9 California; she is opposed to government endorsement of religion, including preferential  
10 and exclusive tax benefits for religious organizations and ministers of the gospel.

11 15. The plaintiffs, Charles and Collette Crannell, are adult individuals who are  
12 members of FFRF and federal and California taxpayers who reside in the Eastern District  
13 of California; they are opposed to government endorsement of religion, including  
14 preferential and exclusive tax benefits for religious organizations and ministers of the  
15 gospel.

16 16. The plaintiff, Mike Osborne, is an adult individual who is a member of  
17 FFRF and a federal and California taxpayer who resides in the Eastern District of  
18 California; he is opposed to government endorsement of religion, including preferential  
19 and exclusive tax benefits for religious organizations and ministers of the gospel.

20 17. The plaintiff, Kristi Craven, is an adult individual who is a member of  
21 FFRF and a federal and California taxpayer who resides in the Eastern District of  
22 California; she is opposed to government endorsement of religion, including preferential  
23 and exclusive tax benefits for religious organizations and ministers of the gospel.

1           18.     The plaintiff, William M. Shockley, is an adult individual who is a  
2 member of FFRF and a federal and California taxpayer who resides in the Eastern  
3 District of California; he is opposed to government endorsement of religion, including  
4 preferential and exclusive tax benefits for religious organizations and ministers of the  
5 gospel.

6           19.     The plaintiff, Paul Ellcessor, is an adult individual who is a member of  
7 FFRF and a federal and California taxpayer who resides in the Eastern District of  
8 California; he is opposed to government endorsement of religion, including preferential  
9 and exclusive tax benefits for religious organizations and ministers of the gospel.

10          20.     The plaintiff, Joseph Rittell, is an adult individual who is a member of  
11 FFRF and a federal and California taxpayer who resides in the Eastern District of  
12 California; he is opposed to government endorsement of religion, including preferential  
13 and exclusive tax benefits for religious organizations and ministers of the gospel.

14          21.     The plaintiff, Wendy Corby, is an adult individual who is a member of  
15 FFRF and a federal and California taxpayer who resides in the Eastern District of  
16 California; she is opposed to government endorsement of religion, including preferential  
17 and exclusive tax benefits for religious organizations and ministers of the gospel.

18          22.     The plaintiff, Pat Kelley, is an adult individual who is a member of FFRF  
19 and a federal and California taxpayer who resides in the Eastern District of California;  
20 she is opposed to government endorsement of religion, including preferential and  
21 exclusive tax benefits for religious organizations and ministers of the gospel.

22          23.     The plaintiff, Carey Goldstein, is an adult individual who is a member of  
23 FFRF and a federal and California taxpayer who resides in the Eastern District of

1 California; he is opposed to government endorsement of religion, including preferential  
2 and exclusive tax benefits for religious organizations and ministers of the gospel.

3 24. The plaintiff, Debora Smith, is an adult individual who is a member of  
4 FFRF and a federal and California taxpayer who resides in the Eastern District of  
5 California; she is opposed to government endorsement of religion, including preferential  
6 and exclusive tax benefits for religious organizations and ministers of the gospel.

7 25. The plaintiff, Kathy Fields, is an adult individual who is a member of  
8 FFRF and a federal and California taxpayer who resides in the Eastern District of  
9 California; she is opposed to government endorsement of religion, including preferential  
10 and exclusive tax benefits for religious organizations and ministers of the gospel.

11 26. The plaintiff, Richard Moore, is an adult individual who is a member of  
12 FFRF and a federal and California taxpayer who resides in the Eastern District of  
13 California; he is opposed to government endorsement of religion, including preferential  
14 and exclusive tax benefits for religious organizations and ministers of the gospel.

15 27. The plaintiff, Susan Robinson, is an adult individual who is a member of  
16 FFRF and a federal and California taxpayer who resides in the Eastern District of  
17 California; she is opposed to government endorsement of religion, including preferential  
18 and exclusive tax benefits for religious organizations and ministers of the gospel.

19 28. The plaintiff, Ken Nahigian, is an adult individual who is a member of  
20 FFRF and a federal and California taxpayer who resides in the Eastern District of  
21 California; he is opposed to government endorsement of religion, including preferential  
22 and exclusive tax benefits for religious organizations and ministers of the gospel.

23 29. The defendant Timothy Geithner ("Geithner") is the Secretary of the  
24 United States Department of the Treasury, with a principal address of 1500 Pennsylvania

1 Avenue N.W., Washington, D.C. 20220. The defendant Geithner is sued in his official  
2 capacity.

3 30. The defendant Douglas Shulman ("Shulman") is the Commissioner of the  
4 Internal Revenue Service, with a principal address of 1111 Constitution Avenue N.W.,  
5 Washington, D.C. 20224. The defendant Shulman is sued in his official capacity.

6 31. The defendant Selvi Stanislaus ("Stanislaus") is the Executive Officer of  
7 the California Franchise Tax Board, with a principal address of P.O. Box 1468,  
8 Sacramento, CA 98512-1468. She is sued in her official capacity.

9 **THE ESTABLISHMENT CLAUSE IS VIOLATED BY**  
10 **EXCLUSIVE AND PREFERENTIAL TAX BENEFITS**

11 32. The Establishment Clause of the First Amendment to the United States  
12 Constitution provides that "Congress shall make no law respecting an establishment of  
13 religion."  
14

15 33. Sections 107 and 265(a)(6) of the Revenue Code, both on their face and as  
16 administered by the defendants Geithner and Shulman, violate the Establishment Clause  
17 of the First Amendment, including because they provide tax benefits only to "ministers of  
18 the gospel," rather than to a broad class of taxpayers.

19 34. Sections 107 and 265(a)(6) subsidize, promote, endorse, favor, and  
20 advance churches, religious organizations, and "ministers of the gospel."

21 35. In order to administer and apply §§ 107 and 265(a)(6), moreover, the IRS  
22 and the Treasury must make sensitive, fact-intensive, intrusive, and subjective  
23 determinations dependent on religious criteria and inquiries, such as whether certain  
24 activities constitute "religious worship" or "sacerdotal functions;" whether a member of  
25 the clergy is "duly ordained, commissioned, or licensed," or whether a Christian college

1 or other organization is "under the authority of" a church or denomination. These and  
2 other determinations result in "excessive entanglement" between church and state  
3 contrary to the Establishment Clause.

4 36. Sections 107 and 265(a)(6) were not enacted as "accommodations" of  
5 religion under the Establishment Clause, and moreover, the income taxation of ministers  
6 of the gospel under the general rules that apply to other individuals would not interfere  
7 with the religious mission of churches or other organizations or the ministers themselves  
8 and do not otherwise substantially burden religion.

9 37. Sections 17131.6 and 17280(d)(2) of the California Revenue and Taxation  
10 Code, both on their face and as administered by the California Franchise Tax Board,  
11 under the direction of the defendant Selvi Stanislaus, also violate the Establishment  
12 Clause of the First Amendment to the United States Constitution.

13 38. Sections 17131.6 and 17280(d)(2) of the California Revenue and Taxation  
14 Code correspond to §§107 and 265(a)(6) of the Internal Revenue Code, and they have the  
15 same constitutional defects and infirmities under the Establishment Clause of the United  
16 States Constitution.

17 39. The defendant Stanislaus, in her official capacity as the Executive Officer  
18 of the California Franchise Tax Board, is responsible for administering and implementing  
19 §§ 17131.6 and 17280(d)(2).

20 40. The defendant Stanislaus has acted under color of state law in allowing tax  
21 benefits that violate the Establishment Clause of the United States Constitution.



**APPLICABLE PROVISIONS OF THE INTERNAL  
REVENUE CODE AND TREASURY REGULATIONS**

1  
2  
3  
4 41. Section 107 of the Internal Revenue Code (26 U.S.C. § 107) provides as  
5 follows:

6 In the case of a minister of the gospel, gross income does not include -

7  
8 (1) the rental value of a home furnished to him as part of his  
9 compensation; or

10  
11 (2) the rental allowance paid to him as part of his compensation, to the  
12 extent used by him to rent or provide a home and to the extent such  
13 allowance does not exceed the fair rental value of the home, including  
14 furnishings and appurtenances such as a garage, plus the cost of utilities.  
15

16 42. Section 1.107-1(a) of the Income Tax Regulations ("regulations")  
17 provides as follows:

18 In order to qualify for the exclusion, the home or rental allowance must  
19 be provided as remuneration for services which are "ordinarily the duties  
20 of a minister of the gospel." In general, the rules provided in  
21 §1.1402(c)-5 will be applicable to such determination. Examples of  
22 specific services the performance of which will be considered duties of a  
23 minister for purposes of §107 include the performance of sacerdotal  
24 functions, the conduct of religious worship, the administration and  
25 maintenance of religious organizations and their integral agencies, and  
26 the performance of teaching and administrative functions at theological  
27 seminaries.  
28

29 43. Although neither §107 of the Code, nor §1.107-1 of the Treasury  
30 regulations, limits the tax benefits of §107 to ministers who are "duly ordained,  
31 commissioned, or licensed," the IRS apparently requires that a minister of the gospel be  
32 "duly ordained, commissioned, or licensed" in order for the minister to be entitled to tax  
33 benefits.

34 44. The Treasury regulations do not clarify the meaning of "duly ordained,  
35 commissioned, or licensed," and difficult determinations often must be made as to  
36 whether this requirement is satisfied.

1           45.     The §107 exclusion is available, according to the IRS, only when the  
2 minister is given use of a home or receives a housing allowance as compensation for  
3 service performed "in the exercise of" his or her ministry, a requirement borrowed from  
4 26 U.S.C. §1402(c)(4).

5           46.     The Treasury regulations under §1402(c)(4) contain detailed rules for  
6 determining the circumstances under which services performed by a minister are "in the  
7 exercise of" his or her ministry.

8           47.     Section 1.1402(c)-5(b)(2) of the Treasury regulations provides that service  
9 performed by a minister in the exercise of his ministry includes: 1) the ministration of  
10 sacerdotal functions; 2) the conduct of religious worship; and 3) the control, conduct and  
11 maintenance of religious organizations (including the religious boards, societies, and  
12 other integral agencies of such organizations) under the authority of a religious body  
13 constituting a church or church denomination.

14           48.     Section 1.1402(c)-5(b)(2)(ii) of the Treasury regulations further provides  
15 that service performed by a minister in the control, conduct and maintenance of a  
16 religious organization relates to directing, managing, or promoting the activities of such  
17 organization. This section also provides that any religious organization is deemed to be  
18 under the authority of a religious body constituting a church or church denomination if it  
19 is organized and dedicated to carrying out the tenets and principles of a faith in  
20 accordance with either the requirements or sanctions governing the creation of  
21 institutions of the faith. The term "religious organization" has the same meaning and  
22 application as is given to the term for income tax purposes.

23           49.     Section 1.1402(c)-5(b)(2)(iv) of the Treasury regulations also provides in  
24 relevant part that if a minister is performing service for an organization which is operated

1 as an integral agency of a religious organization under the authority of a religious body  
2 constituting a church or church denomination, all service performed by the minister in the  
3 control, conduct, and maintenance of such organization is in the exercise of his ministry,  
4 including purely secular duties.

5 50. Section 265(a)(6) of the Internal Revenue Code further allows a minister  
6 of the gospel to claim deductions under §§163 and 164 of the Revenue Code for  
7 residential mortgage interest and property taxes, even though the money used to pay such  
8 amounts was received from a church or other employer in the form of a tax-exempt §107  
9 allowance. Such "double-dipping" is disallowed for non-clergy taxpayers.

10 **THE FEDERAL AND STATE TAX BENEFITS**  
11 **VIOLATE THE ESTABLISHMENT CLAUSE**  
12

13 51. Sections 107 and 265(a)(6) of the Revenue Code provide economic  
14 benefits for "ministers of the gospel" that are not provided to other taxpayers, including  
15 federal taxpayers who are plaintiff members of FFRF in the Eastern District of California.

16 52. Sections 107 and 265(a)(6) were enacted by Congress to provide benefits  
17 to "ministers of the gospel" in circumstances not allowed to other taxpayers.

18 53. Sections 107 and 265(a)(6), both on their face and as administered by the  
19 defendants Geithner and Shulman, violate the Establishment Clause of the First  
20 Amendment, and the defendants should be enjoined from any further allowance of such  
21 tax benefits to ministers of the gospel.

22 54. The defendant Stanislaus similarly should be enjoined from allowing or  
23 granting tax benefits under §§ 17131.6 and 17280(d)(2) of the California Revenue and  
24 Taxation Code that are available only to ministers of the gospel.

1           55.     The actions of all the defendants have the effect each year of excluding  
2 hundreds of millions of dollars from taxation, and this exclusion is available only to  
3 ministers of the gospel.

4           56.     The tax preferences granted to ministers of the gospel under the Internal  
5 Revenue Code and the California Revenue and Taxation Code also enable churches and  
6 other religious organizations to reduce their salaries and compensation costs.

7           57.     The employees of secular organizations are not allowed these tax  
8 preferences under the same favorable terms and conditions as ministers of the clergy.

9           58.     The tax benefits provided to "ministers of the gospel" under § 107 of the  
10 Revenue Code are not equivalent to the "convenience of the employer" limitation  
11 applicable to secular employees.

12           59.     The tax preferences afforded ministers of the gospel constitute an  
13 exclusive and preferential subsidy to religion.

14           WHEREFORE, the Plaintiffs demand judgment as follows:

15           A.     Declaring that the actions of all defendants violate the Establishment  
16 Clause of the First Amendment to the United States Constitution;

17           B.     Declaring that §§107 and 265(a)(6) of the Internal Revenue Code violate  
18 the Establishment Clause of the First Amendment to the United States Constitution;

19           C.     Declaring that the provisions of the California Revenue and Taxation  
20 Code that correspond to § 107 and 265(a)(6) of the Internal Revenue Code violate the  
21 Establishment Clause of the First Amendment to the United States Constitution;

22           D.     Enjoining the defendants from continuing to grant or allow tax benefits  
23 under §§107 and 265(a)(6) of the Internal Revenue Code and the corresponding sections  
24 of the California Revenue and Taxation Code;

1 E. Declaring that the defendant Stanislaus in administering and enforcing the  
2 provisions of the California Revenue and Taxation Code that correspond to §§107 and  
3 265(a)(6) of the Internal Revenue Code is acting under color of law and the plaintiffs are  
4 entitled to prospective equitable relief and remedies under 42 U.S.C. §1983;

5 F. Awarding the Plaintiffs their reasonable costs, disbursements and  
6 attorneys fees, as allowed by law, including pursuant to 42 U.S.C. §1988 and 28 U.S.C.  
7 §2412; and

8 G. Award such further relief is sought that the Court deems just and  
9 equitable.

10 Dated this 18th day of June, 2010.

11 /s/ Richard L. Bolton  
12 Richard L. Bolton (SBN: 1012552)  
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**CERTIFICATE OF SERVICE**

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IT IS HEREBY CERTIFIED that service of the foregoing Amended Complaint for Declaratory and Injunctive Relief has been made this 18th day of June, 2010 via the Court's CM/ECF system to:

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