



***Most recent update to Housing Allowance Ruling
March 18, 2019***

In a decision published on March 15, 2019, the United States Court of Appeals for the Seventh Circuit has held the housing allowance permitted by 26 § U.S.C. 107(2) to be constitutional. This decision reverses the ruling of the district court, which would have enjoined enforcement of § 107(2). It is the first time the 7th Circuit has addressed the constitutionality of § 107(2), as it had ruled in a previous case that the Freedom From Religion Foundation (“FFRF”) did not have standing.

After first concluding that FFRF had sufficiently established standing to bring its lawsuit, the 7th Circuit then analyzed the constitutionality of § 107(2) by the application of multiple legal standards. The 7th Circuit found that § 107(2) met the requirements of each of those standards, and that it thus did not violate the Establishment Clause of the First Amendment. This means the housing allowance provided to ministers by § 107(2) continues to be valid and available.

It is possible, if not likely, that FFRF will ask the United States Supreme Court to review the 7th Circuit’s ruling, but there is no guarantee that such a request would be granted. GCFA will continue to monitor, and provide updates on, the progress of this case, or any other actions the FFRF may take in its ongoing battle against § 107.

Rev. March 18, 2019

After a lengthy briefing period, the 7th Circuit has finally set the date and time for oral argument in the Freedom From Religion Foundation’s challenge to the constitutionality of the housing allowance. The argument will be held on Wednesday, October 24, at 9:30 a.m. central time. As of now, the court has given each side 30 minutes to make their arguments. It has also permitted the “Amici Tax Law Professors” to use a portion of the Freedom From Religion Foundation’s time.

That group’s brief was filed, in support of the Freedom From Religion Foundation’s arguments, by Adam Chodorow (Willard H. Pedrick Distinguished Research Scholar, Associate Dean of Academic Affairs, Sandra Day O’Connor College of Law, Arizona State University; he will participate in the oral argument) on behalf of himself and a number of other law school professors. Once the oral argument hearing is over, it is unknown how long it will take the court to issue its ruling.

Legal Services Department
Rev. October 11, 2018

[NOTE: The Legal Services Department will continue to monitor this case and will update its analysis when necessary. Updates will be found at www.gcfa.org. If you should have any questions, please feel free to contact us at legal@gcfa.org.]