

Court Finds Housing Allowance Constitutional

In a surprising unanimous decision on March 15, 2019, the Seventh Circuit Court of Appeals held that the ministerial housing allowance did not violate the U.S. Constitution. While Court observers were divided on their predictions about what the court's final decision might be, the unanimous decision upholding the "cash" housing allowance took almost everyone by surprise.

"For both active and retired ministers, we could not have gotten, or even hoped for, a better decision. There is no doubt that prayer made the difference in this situation. So, we rejoice with our ministers in this incredible victory," stated Arthur D. (Art) Rhodes, President and Chief Executive Officer of the Church of God Benefits Board, Inc.

The plaintiffs who brought this case, an atheistic organization called Freedom From Religion Foundation, stated that they are considering their options, now that the appellate court has ruled against their claim that the ministerial housing allowance violated the Establishment Clause of the First Amendment. Potential options include seeking a review of the decision by all members of the Seventh Circuit Court of Appeals or seeking an appeal to the U.S. Supreme Court through a writ of certiorari. The chance of success under either option is very limited. Within 90 days or so, the losing party will have to exercise their preferred option on how to proceed regarding this latest decision.

The most likely option will be for the plaintiffs or a similar group to file a new lawsuit in another jurisdiction with the hopes of getting a more favorable decision. It would most likely take several years for a new lawsuit to work its way through the legal system.

The current case, *Gaylor v. Mnuchin*, only dealt with the "cash" ministerial housing allowance paid by churches whose pastors either rent or own their own homes, as well as ministers in retirement who are drawing from a "church" retirement plan, such as the Ministers' Retirement Plan of the Church of God. The same challenge to the parsonage allowance (where a church provides a church-owned home for the pastor's use) was dismissed early in the litigation due to a technical issue.

The Church of God International Office and the Church of God Benefits Board – the administrator of the Ministers' Retirement Plan – were very active in fighting for the ministerial housing allowance, filing a legal brief at the appellate court along with some 40 other denominations and retirement plans.

"It is certainly evident that the Seventh Circuit looked very closely at the law supporting the ministerial housing allowance that has been in place for more than 60 years. They also looked at the impact that disregarding that legal precedent would have on both active and retired ministers of the Gospel. So, while this battle is certainly not over, we thank all those who have been praying for this result," noted Dennis W. Watkins, legal counsel for the Church of God and a member of the Board of Directors of the Church of God Benefits Board.

Additional information on the litigation involving the ministerial housing allowance, along with a copy of the court's recent decision, can be found at <https://www.benefitsboard.com/housing-allowance>.