

Federal court of appeals reverses judge's decision on clergy housing taxes

by [Kimberly Winston](#) in the [December 10, 2014](#) issue

A federal court of appeals rejected a case brought by an atheist organization that would have declared tax-exempt clergy housing allowances unconstitutional.

The November 13 ruling overturns a 2013 decision by U.S. District Court judge Barbara Crabb, who had ruled that the exemption “provides a benefit to religious persons and no one else, even though doing so is not necessary to alleviate a special burden on religious exercise.”

But the Freedom from Religion Foundation, a First Amendment watchdog group based in Madison, Wisconsin, that has pursued the case since 2011, is not dropping the case. Annie Laurie Gaylor, FFRF's copresident, said FFRF was reconsidering its legal options. The only venue left to hear the case would be the U.S. Supreme Court.

The Chicago-based Seventh U.S. Circuit Court of Appeals overturned Crabb's ruling because it found Gaylor and FFRF lacked “standing”—meaning they had no right to sue because the law did not affect them.

Gaylor and Dan Barker, copresident and an ordained minister, did not seek a housing allowance for themselves under the law.

“Dan took the allowance when he was a minister, but now that he is head of the largest atheist and agnostic organization in the country, he cannot take it,” Gaylor said. “That clearly shows preference for religion.”

The exemption is worth about \$700 million per year, according to the Joint Committee on Taxation's Estimate of Federal Tax Expenditure.

“Society has tried to relieve the clergy's housing burden because of the tremendous social benefits churches offer the culture,” said Tony Perkins, president of the Washington-based Family Research Council. Most clergy, “despite their exceptional educations, receive only modest salaries.”

The Orthodox Union, which represents Orthodox Jews, noted that the housing allowance helps many rabbis live in homes they might not otherwise be able to

afford because “congregational rabbis and other clergy members must reside within walking distance to their synagogues”; observant Jews do not drive on the Sabbath or most holidays. —Religion News Service

*This article was edited on December 1, 2014.*