

1 Michael A. Newdow (SBN: 220444)
NEWDOW LAW
2 P.O. Box 233345
Sacramento, CA 95823
3 Phone: 916-427-6669
newdowlaw@gmail.com

4 Attorney for Plaintiffs
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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8 **SACRAMENTO DIVISION**

9 **FREEDOM FROM RELIGION**
10 **FOUNDATION, INC.; PAUL**
11 **STOREY; BILLY FERGUSON;**
12 **KAREN BUCHANAN; JOSEPH**
13 **MORROW; ANTHONY G. ARLEN;**
14 **ELISABETH STEADMAN;**
15 **CHARLES AND COLLETTE**
16 **CRANNELL; MIKE OSBORNE;**
17 **KRISTI CRAVEN; WILLIAM M.**
18 **SHOCKLEY; PAUL ELLCESSOR;**
19 **JOSEPH RITTELL; WENDY**
20 **CORBY; PAT KELLEY; CAREY**
21 **GOLDSTEIN; DEBORA SMITH;**
22 **KATHY FIELDS; RICHARD**
23 **MOORE; SUSAN ROBINSON; AND**
24 **KEN NAHIGIAN,**

25 **Plaintiffs,**

26 **v.**

27 **TIMOTHY GEITHNER, in his**
28 **official capacity as Secretary of the**
United States Department of the
Treasury; DOUGLAS SHULMAN, in
his official capacity as Commissioner
of the Internal Revenue Service; and
SELVI STANISLAUS, in her official
capacity as Executive Officer of the
California Franchise Tax Board,

Defendants.

CASE NO.:

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

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
7 by providing preferential tax benefits to ministers of the gospel. Plaintiffs request that
8 the 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) and 1367 with respect to the relief
14 sought against defendant Selvi Stanislaus. The Court also has the authority to issue a
15 declaratory judgment under 28 U.S.C. § 2201. The Court further has the authority to
16 award 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).

24 **PARTIES**

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

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

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

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

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

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

26 14. The plaintiff, Elisabeth Steadman, is an adult individual who is a member
27 of FFRF and a federal and California taxpayer who resides in the Eastern District of
28 California; she is opposed to government endorsement of religion, including preferential

1 and exclusive tax benefits for religious organizations and ministers of the gospel.

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

7 16. The plaintiff, Mike Osborne, 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; he is opposed to government endorsement of religion, including preferential
10 and exclusive tax benefits for religious organizations and ministers of the gospel.

11 17. The plaintiff, Kristi Craven, 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;
13 she is opposed to government endorsement of religion, including preferential and
14 exclusive tax benefits for religious organizations and ministers of the gospel.

15 18. The plaintiff, William M. Shockley, is an adult individual who is a member
16 of 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 19. The plaintiff, Paul Ellcessor, 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 20. The plaintiff, Joseph Rittell, is an adult individual who is a member of FFRF
24 and a federal and California taxpayer who resides in the Eastern District of California;
25 he is opposed to government endorsement of religion, including preferential and
26 exclusive tax benefits for religious organizations and ministers of the gospel.

27 21. The plaintiff, Wendy Corby, is an adult individual who is a member of
28 FFRF and a federal and California taxpayer who resides in the Eastern District of

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

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

7 23. The plaintiff, Carey Goldstein, 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; he is opposed to government endorsement of religion, including preferential
10 and exclusive tax benefits for religious organizations and ministers of the gospel.

11 24. The plaintiff, Debora Smith, 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; she is opposed to government endorsement of religion, including preferential
14 and exclusive tax benefits for religious organizations and ministers of the gospel.

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

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

27 28. The plaintiff, Ken Nahigian, is an adult individual who is a member of
28 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 29. The defendant Timothy Geithner ("Geithner") is the Secretary of the United
4 States Department of the Treasury, with a principal address of 1500 Pennsylvania
5 Avenue N.W., Washington, D.C. 20220. The defendant Geithner is sued in his official
6 capacity.

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

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

13
14 **THE ESTABLISHMENT CLAUSE IS VIOLATED BY
EXCLUSIVE AND PREFERENTIAL TAX BENEFITS**

15 32. The Establishment Clause of the First Amendment to the United States
16 Constitution provides that "Congress shall make no law respecting an establishment of
17 religion." Article 1, Sec. 4 of the California Constitution contains a similarly worded
18 Establishment Clause, and Article 16, Sec. 5 of the California Constitution prohibits aid
19 in support of "any religious sect, church, creed or sectarian purpose."

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

24 34. Sections 107 and 265(a)(6) subsidize, promote, endorse, favor, and advance
25 churches, religious organizations, and "ministers of the gospel," and they discriminate
26 against secular organizations, including nonprofit organizations such as FFRF that
27 promote atheism, humanism, secularism, and other non-religious worldviews, as well as
28 their employees and members.

1 35. In order to administer and apply §§ 107 and 265(a)(6), moreover, the IRS
2 and the Treasury must make sensitive, fact-intensive, intrusive, and subjective
3 determinations dependent on religious criteria and inquiries, such as whether certain
4 activities constitute "religious worship" or "sacerdotal functions;" whether a member of
5 the clergy is "duly ordained, commissioned, or licensed," or whether a Christian college
6 or other organization is "under the authority of" a church or denomination. These and
7 other determinations result in "excessive entanglement" between church and state
8 contrary to the Establishment Clause.

9 36. Sections 107 and 265(a)(6) are not permissible "accommodations" of
10 religion under the Establishment Clause, in part, because the income taxation of
11 ministers of the gospel under the general rules that apply to other individuals would not
12 interfere with the religious mission of churches or other organizations or the ministers
13 themselves.

14 37. Sections 17131.6 and 17280(d)(2) of the California Revenue and Taxation
15 Code, both on their face and as administered by the California Franchise Tax Board,
16 under the direction of the defendant Selvi Stanislaus, also violate the Establishment
17 Clause of the First Amendment to the United States Constitution and the Establishment
18 Clause of Article 1, Sec. 4, of the California Constitution, as well as Article 16, Sec. 5
19 of the California Constitution.

20 38. Sections 17131.6 and 17280(d)(2) of the California Revenue and Taxation
21 Code correspond to §§107 and 265(a)(6) of the Internal Revenue Code, and they have
22 the same constitutional defects and infirmities under the Establishment Clauses of the
23 California and United States Constitutions.

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

27

28

1 licensed," the IRS apparently requires that a minister of the gospel be "duly ordained,
2 commissioned, or licensed" in order for the minister to be entitled to tax benefits.
3

4 44. The Treasury regulations do not clarify the meaning of "duly ordained,
5 commissioned, or licensed," and difficult determinations often must be made as to
6 whether this requirement is satisfied.
7

8 45. The §107 exclusion is available, according to the IRS, only when the
9 minister is given use of a home or receives a housing allowance as compensation for
10 service performed "in the exercise of" his or her ministry, a requirement borrowed from
11 26 U.S.C. §1402(c)(4).
12

13 46. The Treasury regulations under §1402(c)(4) contain detailed rules for
14 determining the circumstances under which services performed by a minister are "in the
15 exercise of" his or her ministry.
16
17

18 47. Section 1.1402(c)-5(b)(2) of the Treasury regulations provides that service
19 performed by a minister in the exercise of his ministry includes: 1) the ministrations of
20 sacerdotal functions; 2) the conduct of religious worship; and 3) the control, conduct and
21 maintenance of religious organizations (including the religious boards, societies, and
22 other integral agencies of such organizations) under the authority of a religious body
23 constituting a church or church denomination.
24
25

26 48. Section 1.1402(c)-5(b)(2)(ii) of the Treasury regulations further provides that
27 service performed by a minister in the control, conduct and maintenance of a religious
28

1 organization relates to directing, managing, or promoting the activities of such
2 organization. This section also provides that any religious organization is deemed to be
3 under the authority of a religious body constituting a church or church denomination if
4 it is organized and dedicated to carrying out the tenets and principles of a faith in
5 accordance with either the requirements or sanctions governing the creation of
6 institutions of the faith. The term "religious organization" has the same meaning and
7 application as is given to the term for income tax purposes.

11 49. Section 1.1402(c)-5(b)(2)(iv) of the Treasury regulations also provides in
12 relevant part that if a minister is performing service for an organization which is operated
13 as an integral agency of a religious organization under the authority of a religious body
14 constituting a church or church denomination, all service performed by the minister in
15 the control, conduct, and maintenance of such organization is in the exercise of his
16 ministry, including purely secular duties.

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

26 **THE FEDERAL AND STATE TAX BENEFITS**
27 **VIOLATE THE ESTABLISHMENT CLAUSE**

1 51. Sections 107 and 265(a)(6) of the Revenue Code provide economic benefits
2
3 for "ministers of the gospel" that are not provided to other taxpayers, including federal
4 taxpayers who are plaintiff members of FFRF in the Eastern District of California.

5 52. Sections 107 and 265(a)(6), both on their face and as administered by the
6
7 defendants Geithner and Shulman, violate the Establishment Clause of the First
8 Amendment, and the defendants should be enjoined from any further allowance of such
9 tax benefits to ministers of the gospel.
10

11 53. The defendant Stanislaus similarly should be enjoined from allowing or
12
13 granting tax benefits under §§17131.6 and 17280(d)(2) of the California Revenue and
14 Taxation Code that are available only to ministers of the gospel.

15 54. The actions of all the defendants have the effect each year of excluding
16
17 hundreds of millions of dollars from taxation, and this exclusion is available only to
18 ministers of the gospel.

19 55. The tax preferences granted to ministers of the gospel under the Internal
20
21 Revenue Code and the California Revenue and Taxation Code also enable churches and
22 other religious organizations to reduce their salaries and compensation costs.
23

24 56. The employees of secular organizations such as FFRF are not allowed these
25 tax preferences, and FFRF and other secular organizations incur comparatively greater
26 compensation costs than they would if their employees could be considered "ministers
27 of the gospel."
28

1 57. The tax preferences afforded ministers of the gospel constitute a subsidy that
2 results in tangible and direct economic injury to FFRF, and to its members and
3 employees, who cannot claim these benefits.
4

5 58. FFRF, a non-profit organization, competes with churches and religious
6 organizations, but the competition is unfair. The tax subsidies available to churches,
7 religious organizations, and ministers of the gospel are not available to FFRF and its
8 employees. FFRF is thereby placed at a competitive disadvantage relative to churches
9 and other organizations whose employees receive tax subsidies.
10
11

12 WHEREFORE, the Plaintiffs demand relief as follows:
13

14 A. A declaration is sought that the actions of all defendants violate the
15 Establishment Clause of the First Amendment to the United States Constitution and that
16 the actions of defendant Stanislaus also violate the Establishment Clause of the
17 California Constitution and the no aid provision of the California Constitution;
18

19 B. A declaration is sought that §§107 and 265(a)(6) of the Internal Revenue
20 Code violate the Establishment Clause of the First Amendment to the United States
21 Constitution;
22

23 C. A declaration is sought that the provisions of the California Revenue and
24 Taxation Code that correspond to §§107 and 265(a)(6) of the Internal Revenue Code
25 violate the Establishment Clause of the First Amendment to the United States
26
27
28

1 Constitution, the Establishment Clause of the California Constitution, and the no aid
2 provision of the California Constitution.
3

4 D. An order is sought enjoining the defendants from continuing to grant or
5 allow tax benefits under §§107 and 265(a)(6) of the Internal Revenue Code and the
6 corresponding sections of the California Revenue and Taxation Code;
7

8 E. A declaration is sought that the defendant Stanislaus in administering and
9 enforcing the provisions of the California Revenue and Taxation Code that correspond
10 to §§107 and 265(a)(6) of the Internal Revenue Code acted under color of law and the
11 plaintiffs are entitled to relief and remedies under 42 U.S.C. §1983;
12

13 F. An order is sought awarding the Plaintiffs their reasonable costs,
14 disbursements and attorneys fees, as allowed by law, including pursuant to 42 U.S.C.
15 §1988 and 28 U.S.C. §2412; and
16
17

18 G. Such further relief is sought that the Court deems just and equitable.

19 Dated this 14th day of October, 2009.
20

21 _____ /s/ Michael A. Newdow
22 Michael A. Newdow (SBN 220444)
23 Attorney at Law
24 NEWDOW LAW
25 P.O. Box 233345
26 Sacramento, CA 95823
27 Phone: 916-427-6669
28 newdowlaw@gmail.com

Attorney for Plaintiffs