

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

AMERICAN ATHEISTS, INC.,)
 ATHEISTS OF NORTHERN)
 INDIANA, INC., &)
 ATHEIST ARCHIVES OF)
 KENTUCKY, INC. &)
)
 Plaintiffs,)
)
 v.)
)
 DOUGLAS SHULMAN)
 COMMISSIONER OF THE)
 INTERNAL REVENUE SERVICE,)
 UNITED STATES GOVERNMENT,)
 DEPARTMENT OF TREASURY,)
)
 Defendant.)
 _____)

**COMPLAINT FOR
INJUNCTIVE &
DECLARATORY RELIEF**

Case No. _____

COME NOW the Plaintiffs, American Atheists, Inc., Atheists of Northern Indiana, Inc., and Atheist Archives of Kentucky, Inc., by and through their undersigned counsel, and for their Complaint and cause of action against Defendant Douglas Shulman, Commissioner of the Internal Revenue Service, state as follows:

1. American Atheists, Inc. (“American Atheists”), Atheists of Northern Indiana, Inc. (“Atheists of Northern Indiana”) and Atheist Archives of Kentucky, Inc. (“Atheist Archives of Kentucky”) seek an injunction and declaratory relief to stop Defendant in his capacity as Commissioner of the Internal Revenue Service (“IRS”), and hence the IRS, from giving preferential treatment to religious organizations and churches under I.R.C. § 501(c)(3) in violation of Plaintiffs’ rights to the Equal Protection of the Laws required by the Due Process Clause of the Fifth Amendment, the First Amendment, and the Religious Test Clause of Article VI, § 3 of the Constitution to the United States of America.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1340, and 1361. Jurisdiction to award injunctive relief is provided by 28 U.S.C. § 1443 and Rule 65, Fed. R. Civ. P. Jurisdiction to issue a declaratory judgment is provided by 28 U.S.C. § 2201. None of the exceptions to these powers contained in I.R.C. §§ 7426(a)(1), 7428, 7476, 7478, or 7479 apply to this case.
3. 28 U.S.C. § 702 waives sovereign immunity for certain actions seeking specific relief other than monetary damages, including this case.
4. Venue is appropriate in the District Court for the Eastern District of Kentucky pursuant to 28 U.S.C. § 1391(e)(1)(B).

PARTIES

5. Plaintiff American Atheists is a New Jersey non-profit, non-political, educational corporation, exempt from taxation under I.R.C. § 501(c)(3), dedicated to the complete and absolute separation of state and church, accepting the explanation of Thomas Jefferson that the First Amendment to the Constitution of the United States was meant to create a “wall of separation” between state and church. It is registered to do business in the Commonwealth of Kentucky under Organization Number 0844175.09. American Atheists has members whose rights have been, are being, and will be adversely affected by the unconstitutional actions of Defendant but who, for fear of obloquy, discrimination, and retaliation are disinclined to be named as plaintiffs in this action. American Atheists can assert such members’ interests in this matter, and therefore has standing to bring this action.
6. Plaintiff Atheists of Northern Indiana is an Indiana non-profit, non-political, educational, and charitable corporation, Organization Number 2012121700996, which must

apply for exemption from taxation under I.R.C. § 501(c)(3). Its purpose is to help support atheists that are wanting to come out to family or have and need support.

7. Plaintiff Atheist Archives of Kentucky is a Kentucky non-profit, non-political, educational corporation, Organization Number 0844674.09, exempt from taxation under I.R.C. § 501(c)(3) if it subjects itself to the IRS's discriminatory informational filing requirements presently in force. Its purpose is to obtain, archive, and distribute the History, literature, and objectives of Atheism.

8. Defendant is the Commissioner of the IRS, with a principal address of 1111 Constitution Avenue N.W., Washington, D.C. 20224; Defendant is sued in his official capacity.

STATEMENT OF FACTS

9. I.R.C. § 501(c)(3) distinguishes between entities that are religious in nature, on the one hand, and those that are charitable, scientific, testing for the public safety, literary, educational, or dedicated to amateur athletics or the prevention of cruelty to children or animals, on the other. "Religious organizations" and "churches" are treated differently from all other organizations entitled to tax exemptions under I.R.C. § 501(c)(3).

Additionally, under the IRS's application of I.R.C. § 501(c)(3), churches receive certain preferences that even religious organizations do not.

10. As the Supreme Court has stated, neither the federal government nor state governments can "constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God, as against those religions founded on different beliefs." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

11. In violation of the Equal Protection of the Laws required by the Due Process Clause of the Fifth Amendment, the First Amendment, and the Religious Test Clause of Article VI, § 3 of the Constitution of the United States, differing treatment of tax exempt entities flows solely from arbitrary discrimination without reason, turning solely upon a particular organization's members' supernatural religious beliefs or lack thereof, or whether such an organization self-identifies as a church or religious organization.

Presumptions for Religious Organizations and Churches Only

12. The IRS sets forth a test of the following fifteen criteria for determining whether an entity qualifies as a "church" under I.R.C. § 501(c)(3):

- (1) A distinct legal existence;
- (2) A recognized creed and form of worship;
- (3) A definite and distinct ecclesiastical government;
- (4) A formal code of doctrine and discipline;
- (5) A distinct religious history;
- (6) A membership not associated with any other church or denomination;
- (7) Ordained ministers ministering to its congregations;
- (8) Ordained ministers selected after completing prescribed studies;
- (9) A literature of its own;
- (10) Established places of worship;
- (11) Regular congregations;
- (12) Regular religious services;
- (13) Sunday schools for religious instruction of the young;
- (14) Schools for the preparation of its ministers; and

- (15) Any other facts and circumstances that may bear upon the organization's claim for church status.
13. Upon information and belief, "religious organizations," in contrast to "churches," typically are non-denominational ministries, interdenominational organizations, ecumenical organizations, and entities whose principal purpose is the study or advancement of religion.
14. Unlike all other tax-exempt entities, religious organizations and churches are presumed by law to qualify for tax-exempt status.
15. With the exception of certain religious organizations whose income exceeds \$5,000, neither churches nor religious organizations generally are required to submit an application for exemption, file Form 1023, or pay the 501(c)(3) application fee (up to \$850).
16. Churches and many religious organizations are not required to make annual informational filings with the IRS.
17. Pursuant to I.R.C. § 7611, the IRS may conduct civil tax inquiries and examinations of religious organizations and churches only when a high-ranking IRS official reasonably believes—based on a written statement of the facts and circumstances—that the purported church may not qualify for an exemption or may not be paying tax on unrelated business or other taxable activity.
18. Thus, individuals nationwide make tax-deductible contributions to churches and religious organizations with relatively little IRS verification of whether an individual organization actually is engaging in any activity even arguably benefitting the public to warrant tax-exempt status.
19. When combined with other subsidization of religious entities, such tax deductions cost the American public an estimated \$71 billion per year.

20. In contrast, all other non-profit and not-for-profit entities must pay a fee and apply to the IRS to seek 501(c)(3) status, without the benefit of any legal presumption of immediate or prospective entitlement to such status.

21. Upon information and belief, a number of atheist organizations have tried to obtain IRS classification as religious organizations or churches under § 501(c)(3) or to otherwise obtain equal treatment.

22. Upon information and belief, most of those applications and attempts were rejected by the IRS.

Exemptions for Churches Only

23. Churches are able to take advantage of the “parsonage exemption” or “parish exemption,” allowing them to deduct housing costs for “licensed, commissioned, or ordained” ministers. Also, churches need not withhold income tax from compensation to “licensed, commissioned, or ordained” ministers.

24. There is no limit on the size of the parsonage allowance each church may deduct or the amount of cash a church may give a religious leader to use for housing costs.

25. This carte blanche allowance is not grounded in any rational logic or reason. For example, upon information and belief, quite a few church leaders, particularly those of so-called mega-churches, live in lavish homes, quite a few have multiple homes, and quite a few are given cash outlays to expend on housing costs that they do not, in fact, so spend.

26. Upon information and belief, clergy each year, with very limited IRS oversight over the movement of large sums of cash, cost the government as much as \$1.2 billion in tax exemptions via the parsonage allowance alone (and perhaps more, once cash outlays not actually used for housing costs are considered).

27. Religious organizations and churches also may elect to be exempt from employer Social Security and Medicare taxes (FICA).

28. In contrast, non-religious entities may not take any deductions for the housing or living expenses of their employees or volunteers. Nor may they elect to be exempt from employer Social Security and Medicare taxes (FICA). Nor may they elect not to withhold income tax from the compensation to their employees.

Privacy Protections for Religious Organizations and Churches Only

29. Churches and many religious organizations are not required to file an Annual Exempt Organization Return, a/k/a Form 990 and its alternate forms, which other 501(c)(3) entities are required to file.

30. Form 990 requires disclosure of significant information. Besides forcing non-religious 501(c)(3) entities to disclose gross income and detailed information about their operations, Form 990 requires disclosure of the identities of individuals receiving salaries, other compensation, and benefits.

31. Moreover, Schedule B requires identification of all contributors who, during a year, contributed more than \$5,000 or 2% of the organization's total contributions and grants received (defined as the amount on (a) Form 990, Part VIII, line 1h, or (b) Form 990-EZ, line 1).

Discrimination Against and Injury to Plaintiffs Solely on Religious Grounds

32. Plaintiffs suffer from unconstitutional discrimination and coercion arising from their inability to satisfy the IRS test to gain classification to secure the same treatment as religious organizations or churches under I.R.C. § 501(c)(3).

33. For example, American Atheists was forced to undergo expense to apply for 501(c)(3) tax exempt status that churches and most religious organizations are not forced to undergo.

34. Additionally, American Atheists is forced to expend time and money making accurate annual filings with the IRS each year or risk losing tax-exempt status or being subject to other sanctions for non-compliance. Most religious organizations and churches are not.

35. The IRS estimates that completing Form 990 requires 211 hours of labor each year.

36. It would violate the sincerely held belief system of American Atheists to seek classification as a “religious organization or church” from the IRS. It, therefore, files its informational return each year while enduring discriminatory treatment.

37. Thus, American Atheists is forced each year to disclose information about its employees, volunteers, and donors—members of the most hated minority in America today that is subjected to great prejudice and discrimination—whereas churches and many religious organizations need not make such disclosures. See Will M. Gervais, et al., Do You Believe in Atheists? Distrust Is Central to Anti-Atheist Prejudice, 101 *J. of Personality and Social Psychology* 1189, 1189 (2011); Pew Forum on Religion & Pub. Life & Pew Research Ctr. for the People & the Press, Views of Religious Similarities and Differences 22 (2009), available in iPollDatabank, Roper Ctr. for Pub. Op. Research, Univ. of Conn., http://www.ropercenter.uconn.edu/data_access/ipoll/ipoll.html (last visited Oct. 11, 2012).

38. As a result of the IRS’s application of I.R.C. § 501(c)(3), donors requiring anonymity are coerced against giving American Atheists more than \$4,999.

39. Comparatively, because the disclosure rule does not automatically apply to churches or most religious organizations, the IRS affords them a fundraising advantage.

40. Atheists of Northern Indiana must apply for 501(c)(3) status by filing Form 1023 and paying a fee. Thereafter, it will be coerced to file a variant of Form 990 or risk losing its tax-exempt status.

41. In contrast, Atheist Archives of Kentucky's sincerely held beliefs would allow it to be classified as a "religious organization" because atheist philosophy concerns solely religious beliefs.

42. It would violate Atheists Archives of Kentucky's sincerely held beliefs, however, to file Form 990-N and suborn discrimination against other atheists generally (and specifically by potentially disclosing their identities), when churches and religious organizations need not make the same informational disclosures.

43. Atheist Archives of Kentucky is subject to coercion to violate its religious beliefs and succumb to the IRS's discriminatory requirement to file the Form 990-N not required of churches or many other religious organizations purportedly earning less than \$5,000 each year.

44. Unless the IRS stops discriminating against Atheist Archives of Kentucky, it will automatically lose its tax-exempt status after three years of non-compliance and potentially face other sanctions.

45. Additionally, because Plaintiffs cannot deduct housing and living expenses of their leaders or employees, whereas churches and religious organizations may, they therefore must incur greater expense to compensate staff competitively.

CLAIM 1: EQUAL PROTECTION

46. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 45 of this Complaint.

47. Defendant and the IRS intentionally, without secular purpose and without rational explanation in law or in fact, apply I.R.C. 501(c)(3) in a manner that arbitrarily and capriciously discriminates solely on the basis of whether an entity's members express religious beliefs and practices acceptable to Defendant.

48. By definition, all entities that qualify as tax exempt pursuant to I.R.C. §501(c)(3) are engaged in not-for-profit or non-profit activities of purported benefit to the public.

49. Nonetheless, the IRS distinguishes between such entities and provides preferential treatment solely to those professing religious belief.

50. Such distinction based upon whether a group's world view can be classified as religious is arbitrary and capricious, not based in reason, and violates the Constitution of the United States of America.

51. Such discrimination by an agency of the government of the United States of America also reinforces widespread discrimination and persecution of atheists, a discrete and insular minority in American politics and society.

52. The discrimination cannot withstand any level of judicial review.

53. Nonetheless, discrimination against those who affirmatively believe there is no God should be subject to the same judicial scrutiny as discrimination against other individuals on religious grounds regarded as belonging to a "suspect class" under Equal Protection principles.

54. I.R.C. § 501(c)(3) discriminates on religious grounds with the net effect being better treatment of those professing religious belief in a supernatural God.

55. Accordingly, Defendant and the IRS have failed to afford taxpayers Equal Protection of the Laws as required by the Due Process Clause of the Fifth Amendment to the Constitution of the United States of America.

CLAIM 2: RELIGIOUS TEST PROHIBITED BY ARTICLE VI, § 3

56. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 55 of this Complaint.

57. Article VI, § 3 of the Constitution of the United States of America provides that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”

58. Upon information and belief, 501(c)(3) entities are public Trusts. Preferential status under 501(c)(3) of religious organizations and churches, which must be enforced by whoever holds the public Office of Commissioner of the IRS, is denied to Plaintiffs and other atheist organizations for no reason other than failure to satisfy the IRS tests for qualifying as a religious organization or church.

59. Accordingly, failure by Defendant and the IRS to apply to Plaintiffs and other atheist or non-religious entities the same treatment routinely given to religious organizations and churches violates the Religious Test Clause of Article VI, § 3 of the Constitution of the United States of America.

CLAIM 3: ESTABLISHMENT OF RELIGION PROHIBITED BY THE
FIRST AMENDMENT

60. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 59 of this Complaint.

61. The Religion Clauses of the First Amendment to the Constitution of the United States of America protect non-religious and atheist citizens to the same degree as they protect religious citizens.

62. Despite the fact that no entity seems to have filed a prior lawsuit to challenge the IRS's long-standing unconstitutional application of I.R.C. § 501(c)(3), requiring equal treatment of all 501(c)(3) entities would not excessively entangle government with religion or impede the First Amendment Rights of any entity currently classified as a religious organization or church.

63. Defendant's preferential treatment of religious organizations and churches forces Plaintiffs to choose between either violating their sincerely held beliefs (against professing to be a church or religious organization or complying with discriminatorily applied laws) or expending time and money to comply with discriminatory laws.

64. Accordingly, Defendant's preferential treatment of religious organizations and churches under I.R.C. § 501(c)(3) violates the Establishment Clause of the First Amendment to the Constitution of the United States of America.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- A. Declaring that all Tax Code provisions treating religious organizations and churches differently than other 501(c)(3) entities are unconstitutional violations

of the Equal Protection of the Laws required pursuant to the Due Process Clause of the Fifth Amendment, the Religious Test Clause of Art. VI, § 3, and the Establishment Clause of the First Amendment of Constitution of the United States of America;

- B. Enjoining Defendant (and, hence, the IRS) from continuing to allow preferential treatment of religious organizations and churches under § 501(c)(3);
- C. Awarding Plaintiffs any appropriate attorney fees and costs; and
- D. Granting such other and further relief as the Court deems just and proper.

Dated this 20th day of December, 2012.



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