

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WISCONSIN**

ANNIE LAURIE GAYLOR; DAN  
BARKER; IAN GAYLOR, Personal  
Representative of the estate of ANNE  
NICOL GAYLOR; and FREEDOM  
FROM RELIGION FOUNDATION,  
INC.,

*Plaintiffs*

v.

Case No. 16-CV-215

STEVEN MNUCHIN, Secretary of the  
United States Department of  
Treasury; DAVID J. KAUTTER,  
Acting Commissioner of the Internal  
Revenue Service; and the UNITED  
STATES OF AMERICA,

*Defendants*

and

EDWARD PEECHER; CHRIS  
BUTLER; CHICAGO EMBASSY  
CHURCH; PATRICK MALONE;  
HOLY CROSS ANGLICAN CHURCH;  
and the DIOCESE OF CHICAGO AND  
MID-AMERICA OF THE RUSSIAN  
ORTHODOX CHURCH OUTSIDE OF  
RUSSIA,

*Intervenor-Defendants*

**INTERVENOR-DEFENDANTS' DOCKETING STATEMENT**

Pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit, Intervenor-Defendants—Edward Peecher, Chris Butler, Chicago Embassy Church, Patrick Malone, Holy Cross Anglican Church, and the Diocese of

Chicago and Mid-America of the Russian Orthodox Church outside of Russia—respectfully submit this Docketing Statement in the above captioned case.

### **I. Parties Appearing in Their Official Capacities**

The parties sued in their official capacity are the Secretary of the Treasury and the Commissioner of Internal Revenue. The current Secretary of the United States Department of Treasury is Steven Mnuchin. The current Acting Commissioner of the Internal Revenue Service is David J. Kautter.

### **II. Prior or Related Appellate Proceedings**

In a prior, related case, several of the same Plaintiffs challenged the constitutionality of 26 U.S.C. § 107 on the same grounds. The district court sua sponte granted summary judgment for Plaintiffs. *Freedom from Religion Found., Inc. v. Lew*, 983 F. Supp. 2d 1051 (W.D. Wis. 2013). This Court vacated and remanded on the ground that Plaintiffs lacked Article III standing. *Freedom from Religion Found., Inc. v. Lew*, No. 14-1152, 773 F.3d 815 (7th Cir. 2014).

### **III. Jurisdictional Statement**

#### **A. District Court's Subject-Matter Jurisdiction**

Plaintiffs challenged the constitutionality of 26 U.S.C. § 107. The District Court found that Plaintiffs lack standing to challenge § 107(1), but have standing to challenge § 107(2) (Doc. 15). Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 2201, 28 U.S.C. § 1343, and 5 U.S.C. § 702. Intervenor-Defendants maintain that the District Court lacked subject-matter jurisdiction because Plaintiffs lack Article III standing.

## **B. Appellate Court's Subject-Matter Jurisdiction**

The District Court entered final judgment on December 15, 2017 (Doc. 96). The District Court's order disposes of all claims of all parties. Intervenor-Defendants filed a timely notice of appeal in the District Court on February 8, 2018. (Doc. 97); 28 U.S.C. § 2107(b). Thus, the Seventh Circuit has jurisdiction to hear this direct appeal of a final judgment under 28 U.S.C. § 1291, but the Seventh Circuit lacks subject-matter jurisdiction for the same reasons that the District Court lacked subject-matter jurisdiction, as stated above.

Respectfully submitted,

/s/ Luke W. Goodrich

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Dated: February 8, 2018

*Counsel for Intervenor-Defendants*

**CERTIFICATE OF SERVICE**

I certify that on February 8, 2018, the foregoing docketing statement was served on counsel for all parties by means of the Court's ECF system.

*/s/ Luke W. Goodrich*  
Luke W. Goodrich