



U. S. Department of Justice

Office of the Solicitor General

Solicitor General

Washington, D.C. 20530

September 20, 1999

Patricia Mack Bryan, Esq.
Senate Legal Counsel
United States Senate
Senate Hart Office Building
Room 642
Washington, D.C. 20510-7250

Re: In re Doiel, No. Civ-97-4147

Dear Ms. Bryan:

I am writing to advise you that I have determined not to appeal the decision in the above case to the United States Court of Appeals for the Eighth Circuit. See 2 U.S.C. 288k(b).

This case concerns the constitutionality of Section 106(a) of the Bankruptcy Code, 11 U.S.C. 106(a). Section 106(a) provides that, with respect to certain sections of the Bankruptcy Code, "sovereign immunity is abrogated as to a governmental unit." 11 U.S.C. 106(a).

In this case, Doiel filed for bankruptcy. At the time, he owed more than \$20,000 in taxes to the State of Nebraska. Doiel listed that debt in his petition. The State of Nebraska did not file a proof of claim, and Doiel's debts were discharged by the Bankruptcy Court. Thereafter, the State began to levy on Doiel's wages in order to recover the taxes Doiel owed before he filed for bankruptcy. In response, Doiel filed an adversary action against the State to determine the dischargeability of the debt, to enjoin further collection efforts, and to recover the money the State had already obtained through its collection efforts. The State moved to dismiss, contending that Section 106(a) violates the Eleventh Amendment. The United States intervened to defend the constitutionality of Section 106(a). The bankruptcy court held Section 106(a) unconstitutional and the district court agreed. Doiel failed to file a notice of appeal.

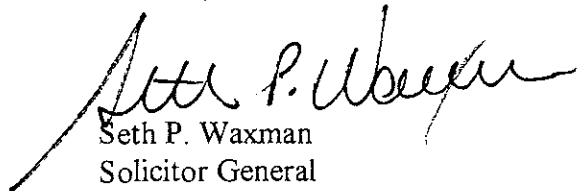
The district court's decision in this case is consistent with the decisions of all courts of appeals that have addressed the question. See In re Sacred Heart Hosp. of Norristown, 133 F.3d 237 (3d Cir. 1998); Matter of Fernandez, 123 F.3d 241 (5th Cir. 1997); In re Creative Goldsmiths, 119 F.3d 1140 (4th Cir. 1997). Those courts, even before the Supreme Court's recent decision in Florida Prepaid Postsecondary v. College Savings, 119 S. Ct. 2199 (1999), all

rejected the argument made by the government in this case that Section 106(a) is appropriate legislation under Section 5 of the Fourteenth Amendment. I have previously informed you of my decision not to petition for a writ of certiorari in any of those cases.

Because the private plaintiff in this case has decided not to pursue an appeal, I have decided against appealing the decision in this case. To do so would involve taking a private plaintiff's case to an appellate court when he has decided not to pursue his claim. I have not finally resolved whether Section 106(a) can be defended as appropriate Section 5 legislation in light of Florida Prepaid.

A copy of the district court's decision in this case is enclosed. The United States has filed a protective notice of appeal. The Clerk's office in the Eighth Circuit has asked that we file a report on the status of the case by October 4, 1999. Please let me know if I can be of further assistance in this matter.

Sincerely,



Seth P. Waxman
Solicitor General

Enclosure

cc: Geraldine R. Gennet, Esq.
General Counsel
United States House of Representatives
Cannon House Office Building
Room 219
Washington, D.C. 20515