



U.S. Department of Justice
Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

July 13, 2000

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

Re: In Re Saunders, No. 98-10078 (D. Mass. May 12, 2000)

Dear Ms. Gennet:

I am writing to advise you that the Department of Justice has determined not to appeal the district court's one-line affirmance of a bankruptcy court's decision in In re Saunders, No. 98-10078 (D. Mass. May 12, 2000). The underlying bankruptcy court decision held that the Religious Freedom Restoration Act, 42 U.S.C. 2000bb et seq., is unconstitutional as applied to this case.

My decision not to appeal is based on unusual factors affecting this particular case. It does not reflect a determination on the part of the Executive Branch that, in its applications to the federal government, the Religious Freedom Restoration Act is constitutionally infirm either generally or as applied here.

This case arises under Chapter 13 of the Bankruptcy Code. Mr. and Mrs. Saunders filed for reorganization under that Chapter and proposed a reorganization plan under which they would pay 10% of their debts to unsecured creditors, at a rate of \$215 per month, while using \$400 per month to continue tithing to their church. The bankruptcy trustee moved to dismiss the petition on the ground that tithing is not a "reasonably necessary" expense for the maintenance and support of the debtor that may be withheld from creditors. 11 U.S.C. 1325(b). The Saunders contended that their right to tithe was protected by the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb, which prohibits the federal government and federal law from substantially burdening an individual's exercise of religion unless the governmental action is the least restrictive means of promoting a compelling interest. 42 U.S.C. 2000bb-1.

The bankruptcy court initially rejected their argument on the ground that RFRA was held unconstitutional in City of Boerne v. Flores, 521 U.S. 507 (1997). The Department of Justice filed a motion for reconsideration explaining that Flores governs only RFRA's applicability to the States and that RFRA remains constitutional as applied to the federal government. In its decision on reconsideration, the bankruptcy court acknowledged that RFRA remains constitutional as applied to federal law. Dec. at 7. The court went on to hold, however, that to the extent RFRA authorized debtors to tithe money to their church rather than to repay creditors, the statute violated both the Free Exercise and the Establishment Clauses of the First Amendment. Accordingly, the bankruptcy court rejected the debtors' proposed plan. The district court adopted the bankruptcy judge's decision in a one-line order.

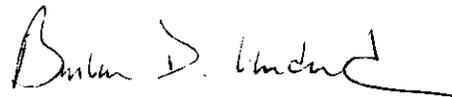
I believe this case warrants no further review for reasons independent of the merits of the decision. First, Mr. and Mrs. Saunders have been making payments throughout the course of this litigation under a reorganization plan designed without tithing. I am advised that they do not intend to appeal this decision. The payments under the reorganization plan will be completed this September. The case will thus, in all likelihood, be moot before an appeal could be completed.

Second, the court's decision is of little enduring relevance, because the subject of tithing under a bankruptcy reorganization plan is now governed not by RFRA, the statute at issue in this case, but by the subsequently enacted Religious Liberty and Charitable Donation Protection Act of 1998, Pub. L. No. 105-183, 112 Stat. 517, which authorizes tithing under defined circumstances.

A protective notice of appeal has been filed to preserve appellate jurisdiction. If we do not hear from you within the next 30 days, we expect to dismiss that notice of appeal.

I am sending a substantially identical letter today to the Senate Legal Counsel. See 2 U.S.C. §288k(b).

Sincerely,



Barbara D. Underwood
Acting Solicitor General

Enclosure