1997

Christians v. Crystal Evangelical Free Church: Interpreting RFRA in the Battle Among God, the Government, and the Bankruptcy Code

Susan D. Franck

Comment

Christians v. Crystal Evangelical Free Church: Interpreting RFRA in the Battle Among God, the Government, and the Bankruptcy Code

*Susan D. Franck**

In keeping with their religious traditions as devout Protestants, Bruce and Nancy Young regularly gave to their church in New Hope, Minnesota.[1] From February 1991 to February 1992, the Youngs tithed[2] $13,450 to their church.[3] Unfortunately—due to financial difficulties—the Youngs filed for Chapter 7 bankruptcy in February 1992.[4] Because the Youngs

* J.D. Candidate 1998, University of Minnesota Law School; B.A. 1993, Macalester College; A.A. 1991, Simon's Rock College of Bard.

1. Paul Gustafson, *Church Can Keep Tithes of Bankrupt Couple*, STAR TRIBUNE, May 7, 1996, at B2; *see* Christians v. Crystal Evangelical Free Church (*In re* Young), 148 B.R. 886, 888 (Bankr. D. Minn. 1992) (observing that as active church members, the Youngs regularly attended services and participated in the church's programs, and that the Church welcomed the Youngs on the premises at any time), *aff'd*, 152 B.R. 939 (D. Minn. 1993), *rev'd*, 82 F.3d 1407 (8th Cir. 1996); *see also* Troy S. Anderson, Christians v. Crystal Evangelical Free Church (In re Young): *Why Would "Christians" Take Money out of the Church Offering Plate?*, 4 REGENT U. L. REV. 177, 180 (1994) (noting that over several years the Youngs gave weekly tithes to their church as part of their normal religious practices).

2. From the earliest biblical times, tithing has been a common practice in Judeo-Christian churches. Tithing is the religious practice of donating a fixed percentage of one's income to the church. *Deuteronomy* 14:22-29; *Leviticus* 27:30-32; *Luke* 18:12; *Malachias* 3:8-10; *Matthew* 23:23; *Numbers* 18:26-28.

3. Christians v. Crystal Evangelical Free Church (*In re* Young), 82 F.3d 1407, 1410 (8th Cir. 1996). The practice of tithing continues to be an important part of the religious activities of many religious individuals, but it is not necessarily mandated by specific churches. *See In re* Navarro, 83 B.R. 348, 356 (Bankr. E.D. Pa. 1988) (asserting that tithes are not mandatory expenses but expenses incurred out of the debtor's conviction). *But see* Hernandez v. Commissioner, 490 U.S. 680, 702 (1989) (holding that payments for religious services may be mandatory in some instances); *In re* Bien, 95 B.R. 281, 283 (Bankr. D. Conn. 1989) (noting that the church tithe is a condition precedent to full participation in the debtor's religion).

4. *Christians*, 82 F.3d at 1410.

tithed the $13,450 while insolvent,[5] the bankruptcy trustee for their estate initiated a proceeding to void the transfers and return the contributions to the estate.[6]

Ten months after filing for bankruptcy,[7] the bankruptcy court found the Youngs' tithes to be voidable fraudulent transfers.[8] On appeal, the United States District Court for the District of Minnesota agreed that the contributions were fraudulent transfers[9] and further held that returning the contributions did not violate the Youngs' free exercise of religion.[10] The Eighth Circuit affirmed in part and reversed in part, holding that, although the tithes to the Church were voidable transfers,[11] the trustee could not recover the money without violating the Religious Freedom Restoration Act (RFRA).[12]

---

5. *Christians*, 148 B.R. at 888. The court noted that the Youngs only stipulated to insolvency for the purposes of the motion for summary judgment and determining the tithes' fraudulency. *Id.* at 888 n.1; *see also* David Peterson, *Bankrupt Couple's Giving Puts Church in a Bind: Order to Turn Over Thousands of Dollars Raises Constitutional Issues*, STAR TRIB., Jan. 10, 1993, at 1B (stating that the Youngs kept tithing the same amount despite their growing debt).

6. *Christians*, 82 F.3d at 1410.

7. The bankruptcy court ruled for summary judgment on December 17, 1992. *Christians*, 148 B.R. at 886.

8. *Id.* at 897. Fraudulent transfers are defined in § 548 of the Bankruptcy Code. *See infra* Part I.C.2. Describing § 548 as a "fraudulent" transfer is somewhat of a misnomer as the purpose of the statute is essentially to turn back the clock one year to put all creditors on a more equal footing. The purpose is not to punish debtors for engaging in outright fraud. For a detailed discussion of fraudulent conveyance law see *infra* notes 85-91 and accompanying text.

9. Christians v. Crystal Evangelical Free Church (*In re* Young), 152 B.R. 939, 950 (D. Minn. 1993), *rev'd*, 82 F.3d 1407 (8th Cir. 1996).

10. *Id.* at 955. The Church raised the issue of the constitutionality of voiding the transfers for the first time upon appeal to the district court. *Id.* at 950. On appeal, the district court did not bar the Church from raising the constitutional issues and examined whether voiding the Youngs' tithes violated the First Amendment. *Id.* at 951-55.

11. *Christians*, 82 F.3d at 1416.

12. *Id.* at 1420. For a general discussion of RFRA see *infra* Part I.A.3. The Eighth Circuit did not conduct a First Amendment free exercise analysis, but instead applied RFRA to examine the burden upon the Youngs' religious practices. *Christians*, 82 F.3d at 1416-17. RFRA did not become law, however, until November 16, 1993. *Clinton Signs Bill That Strengthens Religious Freedom*, L.A. TIMES, Nov. 17, 1993, at A10. RFRA specifically provides that it "applies to all Federal and State law . . . whether adopted before or after November 16, 1993." 42 U.S.C. § 2000bb-3(a) (1994). Despite RFRA passing *after* the Youngs filed their bankruptcy petition, the Eighth Circuit could still apply RFRA to the Youngs' case because the Bankruptcy Code is federal law. *Christians*, 82 F.3d at 1416-17.

The Eighth Circuit is the first circuit court to evaluate the application of RFRA in relation to tithing, bankruptcy, and fraudulent conveyance law.[13] The interaction between bankruptcy law and the religious practice of tithing presents a unique opportunity to resolve fundamental issues underlying the appropriate application of RFRA.[14]

This Comment contends that the Eighth Circuit inappropriately applied RFRA within the context of bankruptcy and fraudulent conveyance law. Part I provides an overview of the history of First Amendment jurisprudence, fraudulent conveyance law, the Bankruptcy Code, and RFRA's application to the tithing practices of insolvent debtors. Part II addresses the *Christians* court's reasoning and holding. Part III argues that, although the court correctly held the Youngs' tithe to be a fraudulent conveyance, the court misconstrued RFRA to resurrect an overly stringent standard of review. This Comment concludes that, in determining the scope of free exercise protection under RFRA, courts should use a functional balancing test to weigh the competing interests of religious liberty against the need for effective government administration.

I. BACKGROUND

A. HISTORY OF FREE EXERCISE JURISPRUDENCE

The First Amendment provides that, Congress "shall make no law . . . prohibiting the free exercise" of religion.[15] Conceptually, the Supreme Court's First Amendment jurisprudence consists of three distinct historical eras that vacillate between emphasizing either the critical nature of governmental interests or the importance of individual religious liberty.

1. *Reynolds* to *Sherbert*

In the landmark case *Reynolds v. United States*,[16] the Supreme Court held that the Free Exercise Clause prohibits laws that regulate religious beliefs but does not preclude laws

13. *Christians*, 82 F.3d at 1416.

14. The constitutionality of RFRA is currently an issue before the Supreme Court. *See* City of Boerne v. Flores, 117 S. Ct. 293 (1996) (granting certiorari).

15. U.S. CONST. amend. I.

16. 98 U.S. 145 (1878).

regulating religious practices.[17] In *Reynolds*, a religious mandate *required* polygamy.[18] The Court found the Constitution does not prohibit a state from criminalizing the practice of polygamy or creating a severe imposition upon religious freedom.[19] In making the sharp distinction between regulating belief and practice, the Court concluded religious freedom did not prohibit legislation that controlled "important feature[s] of social life."[20] For nearly 100 years, the courts used the *Reynolds* approach to balance fundamental societal concerns against the need for religious freedom.[21]

The Court's analysis of government action burdening the free exercise of religion changed dramatically, however, in *Sherbert v. Verner*.[22] Under the *Sherbert* standard of review, the focus of analysis shifted to whether a government action substantially burdened an individual's religious exercise[23] and whether the government demonstrated a compelling government interest to justify the religious burden.[24]

---

17. *Id.* at 166.

18. *Id.* at 161-62. Even though the religious mandate at issue in *Reynolds* told parishioners to engage in polygamy or they would not gain entrance to heaven, the Court concluded the Free Exercise Clause did not prohibit the government from enacting laws prohibiting polygamy. *Id.* at 161-67.

19. *Id.*

20. *Id.* at 165.

21. The Court had a long tradition of invalidating certain religious practices and conduct but upholding actions implicating mere personal religious belief. *See* Braunfeld v. Brown, 366 U.S. 599, 603 (1961) (noting that freedom of belief is absolute, but the government can place burdens upon religious behavior); Prince v. Massachusetts, 321 U.S. 158, 166-67 (1944) (upholding the prosecution of a religiously motivated mother under the child labor laws for having her children dispense literature in the streets); Minersville Sch. Dist. v. Gobitis, 310 U.S. 586, 595 (1940) (noting that in certain circumstances religious freedom must give way to the needs of majority government).

22. 374 U.S. 398 (1963).

23. *Id.* at 403-04. The Court determined that South Carolina's system of unemployment benefits forced the appellant to choose between following her religious beliefs as a Seventh Day Adventist and forgoing government benefits, or abandoning her religious practices to accept work. *Id.* at 404.

24. The *Sherbert* Court indicated this compelling interest standard is a very high threshold requiring the government to demonstrate a very grave and substantial interest. The Court specifically noted that, "in this highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.'" *Id.* at 406 (citing Thomas v. Collins, 323 U.S. 516, 530 (1945)).

2. *Sherbert* to *Smith*

Ultimately, the majority of the Supreme Court's free exercise decisions did not use the "strict scrutiny" standard specifically mandated by *Sherbert*. Rather, the Court employed a functional balancing test that weighed the right to free exercise against the government's interest in enforcing its laws and maintaining civil order.[25] In *United States v. Lee*,[26] the Court defined the administration of a social security program as a compelling government interest.[27] In contrast to the incidental burden of paying a social security tax, the Court deemed the "nationwide" program necessary to accomplish the overriding governmental interest in providing a comprehensive insurance system.[28] Similarly, in *Hernandez v. Commissioner*,[29] despite the increased tax burden on religious activities, the Supreme Court found the government's broad public interest in administering the tax code to be compelling.[30]

Although the Court held that administrative efficiency and control of fraud may sometimes constitute sufficient govern-

25. In *Goldman v. Weinberger*, the Supreme Court applied a balancing test in its examination of a prohibition against wearing yarmulkes against the military requirement of uniform dress. 475 U.S. 503, 509-10 (1986). The Court, however, has not always been consistent. In *Gillette v. United States*, the court characterized the incidental burdens on individuals objecting to their draft for the Vietnam war as justified by the substantial government interest in military conscription. 401 U.S. 437, 462 (1971). The *Gillette* Court found a broader government interest in procuring manpower for military purposes because of Congress's constitutional grant to raise and support armies. *Id.* Several cases adopted this functional balancing approach. *See* Ira C. Lupu, *Of Time and the RFRA: A Lawyer's Guide to the Religious Freedom Restoration Act*, 56 MONT. L. REV. 171, 183 (1995) (noting different invocations of this approach).

26. 455 U.S. 252 (1982). In *Lee*, the social security system burdened an Amish shopkeeper's religious freedom because the Old Order Amish have a religious objection to providing "the kind of assistance contemplated by the social security system." *Id.* at 257.

27. The Court noted that the "tax system could not function if denominations were allowed to challenge the tax system." *Id.* at 260.

28. *Id.* at 257-58 (citations omitted). The Court went on to find that, because the social security system has a comprehensive nature, the program required mandatory and continuous participation. *Id.* at 258-59; *see also* Bowen v. Roy, 476 U.S. 693, 710 (1986) (noting that the social security program is the largest domestic government program in the United States and distributes approximately $51 billion monthly to 36 million recipients).

29. 490 U.S. 680 (1989).

30. The Supreme Court denied a taxpayer a deduction for the cost of training sessions because the government interest in maintaining a sound tax system is "substantial." *Id.* at 699-700.

ment interests,[31] the government still had to demonstrate that the challenged government action was "a reasonable means of promoting a legitimate public interest."[32] This method of establishing a "compelling state interest" functionally balanced the burden upon religious freedom, the nature of the government interest, and the extent to which the government is burdened by making an exception.[33] Finally, in *Employment Division v. Smith*,[34] the Supreme Court determined that the *Sherbert* compelling interest test was unworkable.[35]

3. *Smith* to RFRA

Employment Division v. Smith was a highly unpopular decision that officially abandoned the *Sherbert* compelling interest test for free exercise claims[36] while suggesting courts leave accommodation of religious practices to the local political process.[37] Congress spent three years trying to alter the effects

---

31. *Roy*, 476 U.S. at 709. In *Roy*, a Native American father objected to requiring his daughter to obtain a Social Security number to obtain food stamps because his religion believed it might rob his daughter of her spirit. *Id.* at 695-96.

32. *Id.* at 707-08.

33. In *Lee*, the Court noted that government accommodation of religious practices is an important component of free exercise analysis. *Lee*, 455 U.S. at 259. The Court specifically recognized that a "balance must be struck between the values of the comprehensive social security system, which rests on a complex of actuarial factors, and the consequences of allowing religiously based exemptions." *Id.*

In fact, in *Wisconsin v. Yoder*, the Supreme Court specifically examined the burden of providing a religious exemption and balanced this against the importance of the government interest. 406 U.S. 205, 235-36 (1972). In *Yoder*, the Supreme Court exempted Amish schoolchildren from a Wisconsin law that required them to attend school until age sixteen. *Id.* at 207. The Court noted that "accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child . . . or in any other way materially detract from the welfare of society." *Id.* at 234. The Court also indicated that, "only those interests of the highest order . . . can *overbalance* legitimate claims to the free exercise of religion." *Id.* at 215 (emphasis added).

34. 494 U.S. 872 (1990).

35. In *Smith*, Alfred Smith was fired from his job with a private drug rehabilitation center because he ingested peyote during a religious ceremony at the Native American Church. *Id.* at 874. The *Smith* Court specifically concluded that the *Sherbert* test is inapplicable to free exercise challenges because of its unsoundness. *Id.* at 885.

36. *Id.* at 884-87.

37. *Id.* at 870. In holding that the government could deny unemployment benefits to workers discharged because of misconduct based upon drug usage, *id.* at 890, the Court noted that the Free Exercise Clause did not require Ore-

of *Smith*.[38] With wide bipartisan support, on November 16, 1993, President Bill Clinton signed into law the Religious Freedom Restoration Act (RFRA).[39]

To establish a violation of RFRA, a party must prove that a government practice substantially burdens his or her religious exercise.[40] The government must then demonstrate that there is a compelling government interest justifying the infringement upon the individual's liberty.[41] Finally, the government must show the regulation is narrowly tailored to advance the compelling interest.[42] Should the government fail to demonstrate either of the last two elements, the claimant is entitled to relief under RFRA.[43] Congress drafted this legislation primarily intending to reinstate the compelling interest test for evaluating state action that burdens the free exercise of religion.[44]

---

gon to provide an exemption for religiously motivated behavior that violated generally applicable criminal laws. *Id.* at 881-82.

38. Justice Scalia invited state legislatures to use the political process to accommodate the needs of religious groups and alleviate any harsh effects of the decision. *See id.* at 890 (noting that other states allow an exception in their drug laws for the sacramental use of peyote and suggesting these decisions are more appropriately left to the political process). Although Congress did initiate the political process, it probably did not meet Justice Scalia's original intentions. Instead of individual states weighing the specific needs for religious liberty and exempting certain religious practices, Congress created a blanket provision that provided a greater scope for the protection of religious freedoms. 42 U.S.C. §§ 2000bb-(1) to -(3) (1994).

During the course of debate, Representative Henry Hyde pointed out that RFRA could not technically "restore the strict scrutiny standard for free exercise claims" in place prior to *Smith*. *Religious Freedom Restoration Act of 1991: Hearings on H.R. 2797 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 102d Cong., 2d Sess. 7 (1992).

39. Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (1994). RFRA had broad bipartisan support throughout the legislative process. Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 TEX. L. REV. 209, 210-11 n.9 (1994). The House and Senate later approved RFRA in an almost unanimous vote. 130 CONG. REC. S14,471 (Oct. 27, 1993); 139 CONG. REC. H2363 (May 11, 1993).

40. 42 U.S.C. § 2000bb-1(a).

41. *Id.* § 2000bb-1(b)(1).

42. *Id.* § 2000bb-1(b)(2).

43. *Id.* § 2000bb-1(c).

44. Indeed, RFRA's official purpose is to "restore the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder* and to guarantee its application in all cases where free exercise of religion is substantially burdened." *Id.* § 2000(b)(1) (citations omitted). Further, the statement of findings accompanying RFRA specifically states:

> [I]n *Employment Division v. Smith*, the Supreme Court virtually eliminated the requirement that the government justify burdens on

RFRA has an incredibly broad application. Not only does it supersede all prior and subsequent[45] federal laws inconsistent with the new requirements, it also creates an exception for religious exercise for all laws—on both the state and federal level—that do not regulate religion on their face.[46] Courts and scholars have questioned its constitutionality, and the Supreme Court recently granted certiorari to address this issue.[47]

---

religious exercise imposed by laws neutral toward religion; and the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

Id. § 2000bb(a)(4) to (a)(5) (citation omitted).

45. RFRA applies to all federal and state law, even those implemented prior to November 16, 1993. *Id.* § 2000bb-3(a) to -3(b). At least one scholar has questioned whether RFRA applies retroactively to cases like the Youngs', begun prior to RFRA's enactment. Michael Stokes Paulsen, *A RFRA Runs Through It: Religious Freedom and the U.S. Code*, 56 MONT. L. REV. 249, 261 n.33 (1995).

46. RFRA defines the term "government" to include a "branch, department, agency, instrumentality, and official . . . of the United States, a State, or a subdivision of a State." 42 U.S.C. § 2000bb-2(1).

47. Several scholars and courts pose significant questions regarding the constitutionality of RFRA. *See generally* Daniel O. Conkle, *The Religious Freedom Restoration Act: The Constitutional Significance of an Unconstitutional Statute*, 56 MONT. L. REV. 39 (1995) (arguing that RFRA's remedial purpose is unconstitutional); Ernest P. Fronzuto III, *An Endorsement for the Test of General Applicability: Smith II, Justice Scalia, and the Conflict Between Neutral Laws and the Free Exercise of Religion*, 6 SETON HALL CONST. L.J. 713, 743-750 (1996) (characterizing the primary problems with RFRA's constitutionality as the separation of powers and congressional authority to enact RFRA).

Other commentators suggest that RFRA may violate the First Amendment, Tenth Amendment, or Eleventh Amendment. *See* Rodney J. Blackman, *Showing the Fly the Way Out of the Fly-Bottle: Making Sense of the First Amendment Religion Clauses*, 42 U. KAN. L. REV. 285, 396-97 n.400 (1994) (arguing that the Establishment Clause, the Tenth Amendment and the Eleventh Amendment are all appropriate bases for challenging the constitutionality of RFRA); Patrick G. Kruse, *Free Exercise Claims by Inmates in State-Owned Correctional Facilities: Is Application of the Religious Freedom Restoration Act Unconstitutional Under the Tenth Amendment*, 73 U. DET. MERCY L. REV. 391, 428-29 (1996) (arguing that, given the Court's expanded reliance on federalism, RFRA may be unconstitutional under the Tenth Amendment). *But see* Carl M. Varady, *Returning to Principle: The Religious Freedom Restoration Act, in Religious Rights in Prison*, HAW. B.J., June 1995, at 6, 7 (arguing the Tenth Amendment does not restrict congressional authority to pass RFRA).

Some courts have held RFRA constitutional. Beginning with the presumption of constitutionality, various circuits determined that Congress's objective in enacting RFRA was merely to "overturn the effects of the *Smith* decision" and not the decision itself. *See* EEOC v. Catholic Univ. of Am., 83 F.3d 455, 469-70 (D.C. Cir. 1996) (agreeing that RFRA does not usurp judicial authority); *see also* Sasnett v. Sullivan, 91 F.3d 1018, 1022 (7th Cir. 1996)

B. JUDICIAL APPLICATION OF RFRA

1. What Constitutes a "Substantial Burden" on Religion

As the pre-*Smith* case law developed, only certain government actions, such as direct and coercive restrictions on religious practices, were sufficient to meet the "substantial burden" requirement.[48] Post-RFRA case law is, however, mixed as to what meets this threshold inquiry. Writing for the Seventh Circuit, Judge Posner determined that a substantial burden "forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs."[49]

Similarly, the Eighth and Tenth Circuits have defined "substantial burden" as government action that forces religious adherents to refrain from religiously motivated conduct[50] or that imposes a significant constraint upon conduct that manifests a central tenet of an individual's beliefs.[51] In contrast, the Fourth,[52] Ninth,[53] and Eleventh[54] Circuits more narrowly de-

---

(stating *Smith* remains undisturbed in its interpretation of the First Amendment); Belgard v. Hawaii, 883 F. Supp. 510, 516 (D. Haw. 1995) (declaring Congress acted within its powers when it enacted RFRA to restore pre-*Smith* boundaries). Other courts have found RFRA unconstitutional and held that it legislates the standards of judicial review for cases implicating the Free Exercise Clause. *See* Keeler v. Mayor of Cumberland, 928 F. Supp. 591, 600 (D. Md. 1996) (asserting that the practical effect of RFRA is to remove the power to consider free exericise issues from the federal courts).

48. Lupu, *supra* note 25, at 199. Professor Lupu notes that substantial burdens upon religious freedom include a denial of freedom to express adherence to one's chosen faith and coercion to act contrary to one's religious beliefs. *Id.; see also* Braunfeld v. Brown, 366 U.S. 599, 609 (1961) (upholding Sunday-closing laws despite their burden on the petitioner's religious practices since it merely made the practice of religion more expensive).

49. Mack v. O'Leary, 80 F.3d 1175, 1178-80 (7th Cir. 1996). Using this test, the Seventh Circuit determined that a prison's refusal to accommodate the needs of Muslim prisoners during a holy period constituted a significant burden upon the prisoners' free exercise of religion. *Id.* at 1179-80.

50. Brown-El v. Harris, 26 F.3d 68, 70 (8th Cir. 1994).

51. Werner v. McCotter, 49 F.3d 1476, 1480 (10th Cir. 1995); *see also* Thiry v. Carlson, 78 F.3d 1491, 1495-96 (10th Cir. 1996) (finding that despite arguments that their daughter's gravesite was a "place of worship," moving it did not substantially burden their religious practices because the plaintiffs' religion allowed gravesites to be moved when necessary).

52. *See, e.g.*, Goodall *ex rel.* Goodall v. Stafford County Sch. Bd., 60 F.3d 168, 172-73 (4th Cir. 1995). In *Goodall*, although the petitioners were forced to pay for their son's speech interpreter if they placed him in a private sectarian school, the added burden was not "substantial" and merely made the exercise of religion more expensive. *Id.* at 173. In support of its holding, the

fine a "substantial burden" as something that prohibits individuals from engaging in conduct that their religion *requires*.

To show a substantial burden within a bankruptcy proceeding in the Ninth and Tenth Circuits, an individual must prove that government action prevents her from engaging in a religiously mandated activity. The government action must substantially interfere with a tenet central to her religious beliefs.[55]

Some bankruptcy courts have found that the voiding of fraudulent transfers under the Bankruptcy Code "does nothing to prevent the debtors' fulfillment of their personally held religious obligation to tithe," because the debtor has already tithed the funds.[56] However, one pre-RFRA bankruptcy court deter-

---

Goodall court found that the Supreme Court has repeatedly held that simply because a person has a constitutional or statutory right does not require the government to subsidize it. *Id.* at 172. In other words, just because a freedom is conferred to an individual does not mean the government must fund it or ensure that the individual realizes all the advantages of the freedom. *Id.* (citing Rust v. Sullivan, 500 U.S. 173, 193 (1991) and Harris v. McRae, 448 U.S. 297, 317-18 (1980)).

53. *See, e.g.*, Bryant v. Gomez, 46 F.3d 948, 949 (9th Cir. 1995) (per curiam). In *Bryant*, a prisoner brought a free exercise claim contending that the prison refused to provide him with "full" Pentecostal services. *Id.* The Ninth Circuit rejected Bryant's free exercise challenge noting that he failed to allege any facts showing that the activities were "mandated by his faith." *Id.* The Ninth Circuit has also determined that an individual must demonstrate that a government action "imposes a substantial burden on a *central tenet* of their religion." Goehring v. Brophy, 94 F.3d 1294, 1299 (9th Cir. 1996) (emphasis added).

54. *See, e.g.*, Cheffer v. Reno, 55 F.3d 1517, 1522 (11th Cir. 1995) (holding that plaintiffs failed to show a substantial burden because their religion did not *require* them to use physical force or obstruction to prevent abortions).

55. Morris v. Midway S. Baptist Church (*In re* Newman), 183 B.R. 239, 251 (Bankr. D. Kan. 1995) (quoting Bryant v. Gomez, 46 F.3d 948, 949 (9th Cir. 1995)) (emphasis added), *aff'd*, No. 95-1228-WEB, 1996 WL 711319 (D. Kan. Nov. 26, 1996). In *Newman*, the bankruptcy court determined that the fraudulent transfer provision had only an incidental effect upon the Newmans' religious practice of tithing since § 548(a) does not prevent the debtor from tithing. *Id.*

56. Fitzgerald v. Magic Valley Evangelical Free Church, Inc. (*In re* Hodge), 200 B.R. 884, 896 (Bankr. D. Idaho 1996). Under this standard, government actions which simply make the practice of religion more difficult are not constitutionally suspect. *Id.* In affirming the bankruptcy court in *In re Newman*, the Kansas district court recently noted that § 548(a) "interfer[es] only minimally with the debtors' ability to tithe." No. 95-1228-WEB, 1996 WL 711319, at *7 (D. Kan. Nov. 26, 1996). Similarly, in *In re Faulkner*, although the debtors believed tithing was required by the Bible, the bankruptcy court found that the bankruptcy rules did not "substantially burden" the debtors' religious exercise. 165 B.R. 644, 646-47 (Bankr. W.D. Mo. 1994). The bankruptcy court specifically held that it was an abuse of Chapter 7 bankruptcy for

mined that denying confirmation of a Chapter 13 repayment plan constituted a substantial burden on religion since it conditioned a government benefit[57] upon ceasing a religious practice.[58]

2. What Constitutes a Compelling Government Interest

Currently, circuits are not in agreement about the definition of a compelling government interest. Most post-RFRA courts are willing to find a compelling government interest in regulating health,[59] safety,[60] national security,[61] and preserving the social security system.[62] The Supreme Court has indicated that the elimination of racial discrimination is a compelling government interest.[63] What constitutes a compelling interest within the context of bankruptcy, however, is unsettled.

---

the debtors to tithe 10% of their income each month to their church. *Id.* at 647.

57. *See* United States v. Kras, 409 U.S. 434, 446-47 (1973) (holding that a right to discharge in a bankruptcy proceeding is a "legislatively created benefit," not a fundamental right).

58. *See In re* Green, 73 B.R. 893, 895-96 (Bankr. W.D. Mich. 1987) (holding that it would be unconstitutional to deny a confirmation solely because debtors would be able to tithe under the plan). It is also important to note the factual distinction between Chapter 7 and Chapter 13 bankruptcy petitions. Although a trustee can void fraudulent transfers pursuant to § 548(a)(2) in both chapters, in Chapter 13 the court must approve a repayment plan that includes "reasonable" monthly expenses. *See* 11 U.S.C. § 1325(b) (1994) (providing that all of the debtor's disposable income in the three years following discharge must be applied to make payments). In contrast, Chapter 7 involves a one-time liquidation of debt. *Id.* § 726.

59. *See, e.g.*, Goehring v. Brophy, 94 F.3d 1294, 1300 (9th Cir. 1996) (noting that public health and well-being have been consistently recognized as compelling government interests).

60. Another Ninth Circuit panel determined that schools have a compelling interest in providing for campus safety. Cheema v. Thompson, 67 F.3d 883, 885 (9th Cir. 1995). Similarly, the Seventh Circuit determined that ensuring safety and orderliness in prisons is a compelling government interest. Mack v. O'Leary, 80 F.3d 1175, 1180 (7th Cir. 1996). The Eighth Circuit also held that safety and security concerns of "administering correctional institutions" were compelling government interests. Hamilton v. Schriro, 74 F.3d 1545, 1555 (8th Cir. 1996).

61. *See, e.g.*, *In re Hodge*, 200 B.R. at 897 (discussing governmental interests that are "compelling"); *In re* Tessier, 190 B.R. 396, 405 (Bankr. D. Mont. 1995) (same).

62. *See* Droz v. Commissioner, 48 F.3d 1120, 1123-24 (9th Cir. 1995) (holding that permitting plaintiff to "opt out" of the social security system would interfere with a compelling government interest).

63. *See, e.g.*, Bob Jones Univ. v. United States, 461 U.S. 574, 604 (1983) (stating that the government has a "fundamental, overriding interest in eradicating racial discrimination").

The court in *In re Tessier* concluded that the government interests in administering the bankruptcy system are not "sufficiently grave to deserve the 'compelling' label when balanced against a parishioner's free exercise of religion."[64] Interestingly, other pre-RFRA[65] and post-RFRA[66] decisions have held that the administration of the bankruptcy system and the protection of creditors constitute compelling government interests.

3. What Constitutes the Least Restrictive Means

Some commentators have suggested that the least restrictive means element never actually became part of the Supreme Court's free exercise jurisprudence prior to *Smith*.[67] In fact, very few bankruptcy cases have articulated a definition of the term "least restrictive means."[68] The Eighth Circuit held that this requirement is met when a regulation impinges upon religious freedom no more than necessary.[69] Other circuits have indicated that a regulation may be narrowly tailored if there

64. *In re Tessier*, 190 B.R. at 405. The court indicated that the government interests include providing the debtor a fresh start, efficiently administering bankruptcy cases, and protecting creditors' interests. *Id.*

65. *See, e.g.*, *In re* Navarro, 83 B.R. 348, 353 (Bankr. E.D. Pa. 1988) (holding that administration of the bankruptcy system was a compelling government interest).

66. *See, e.g.*, Morris v. Midway S. Baptist Church (*In re* Newman), 183 B.R. 239 (Bankr. D. Kan. 1995), *aff'd*, No. 95-1228-WEB, 1996 WL 711319 (D. Kan. Nov. 26, 1996). The bankruptcy court in *In re Newman* stated that "the Bankruptcy Code as a whole [serves] a compelling governmental interest." *Id.* at 252 (citations omitted). In support of this assertion, the court noted that recovering fraudulent transfers "has been a basic tenet of bankruptcy law for 400 years." *Id.*

67. *See* Scott C. Idleman, *The Religious Freedom Restoration Act: Pushing the Limits of Legislative Power*, 73 TEX. L. REV. 247, 282 (1994) (arguing that the requirement was really just an "experiment" conducted by certain Supreme Court justices). In cases where the courts addressed this element, the least restrictive means requirement "proved basically worthless." *Id.* In *Lukumi*, however, the Court indicated that in order to be narrowly tailored there must not be a less restrictive alternative or other feasible alternative to implement the same government interest. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 538 (1993).

68. One of the few cases that lends clarification is *In re Turner*, 193 B.R. 548 (Bankr. N.D. Cal. 1996). In that case, the court held that because of the inadequacy of possible substitutes for controlling fraud, requiring the petitioner to use his social security number as a means of identification was the least restrictive means available. *Id.* at 556. Unfortunately, the case is procedurally different from *Christians* because *Turner* involved the fraudulent preparation of bankruptcy petitions, not fraudulent conveyances.

69. Hamilton v. Schriro, 74 F.3d 1545, 1554 (8th Cir. 1996).

are no feasible alternatives[70] accomplishing the same goals as the contested regulation.[71] Similarly, if uniform participation is required or an exemption would impede the administration of the program, the statute is likely to be the least restrictive alternative.[72]

C. FRAUDULENT CONVEYANCES AND BANKRUPTCY LAW

1. History of Fraudulent Conveyances and Bankruptcy Law

The American Bankruptcy Institute expected that more than one million individuals—approximately 1% of all households—would file bankruptcy petitions in fiscal year 1996.[73] In the first quarter of 1996, more than 266,000 consumers filed for bankruptcy.[74] Since 1980, the number of bankruptcy filings has tripled,[75] and 95% of filings today are consumer bankruptcies filed by private individuals.[76] Due to economic losses caused by bankruptcy totaling $7.2 billion in 1994 and $10.4

---

70. An alternative is not "feasible" if it presents a potential constitutional problem. Helland v. South Bend Community Sch. Corp., 93 F.3d 327, 331 (7th Cir. 1996). Mr. Helland was a devout Christian who worked as a substitute teacher and sometimes read the Bible and distributed biblical pamphlets in class. *Id.* at 329. The court noted that removing Helland was the best way to ensure avoiding the unconstitutional interjection of religion into the classroom, particularly since tolerating the behavior "would have opened up another constitutional can of worms." *Id.* at 331.

71. To survive constitutional scrutiny, the government must prove "the lack of a less restrictive alternative." Cheema v. Thompson, 67 F.3d 883, 885 (9th Cir. 1995).

72. *See, e.g.*, Goehring v. Brophy, 94 F.3d 1294 (9th Cir. 1996). In *Goehring*, because mandatory, uniform participation by every student was essential to an insurance system's survival, the Ninth Circuit held that the regulation was narrowly tailored. *Id.* at 1301. The Ninth Circuit stated that to maintain an organized society, particularly when a wide variety of services are at stake, sometimes religious freedom must yield to accommodate the common good. *Id.* at 1301-03.

73. *See* Amanda Walmac, *Rising Out of Bankruptcy*, MONEY, Oct. 1996, at 127 (discussing the rise in personal bankruptcy filings).

74. Toddi Gutner, *The Best Moves If You're Broke*, BUS. WK., Aug. 12, 1996, at 110. This was a 25% increase over the same period in 1995. *Id.*

75. *See* Hope Viner Samborn, *Going for Broke: Soaring Bankruptcies Prompt Calls for New Repayment Plan*, A.B.A. J., Sept. 1996, at 16 (discussing the increased number of bankruptcy filings and ways to decrease the burden on bankruptcy courts). There were 331,098 bankruptcy petitions filed in 1980; 412,510 petitions filed in 1985; 782,960 filed in 1990; and 926,601 filed in 1995. *Id.*

76. *Id.* About 70% of those who file for bankruptcy file for liquidation under Chapter 7. Gutner, *supra* note 74, at 111.

billion in 1995, the steep rise in personal bankruptcies "hits every citizen in the wallet."[77]

Historically, Congress aimed the Bankruptcy Code at promoting the following government interests: providing the debtor with a fresh start,[78] ensuring a fair system of administration that keeps debtors from becoming public charges,[79] facilitating the vitality of the economy to protect public and private interests,[80] ensuring easy administration and uniformity of the bankruptcy system,[81] and protecting the interests of creditors.[82] Protecting the interests of creditors primarily involves ensuring that the maximum amount of assets is left in the bankruptcy estate.[83] To accomplish this, bankruptcy trus-

---

77. Gutner, *supra* note 74, at 46.

78. *See* Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393, 1426-27 (1985) (discussing bankruptcy law's granting of a "right to a financial fresh start" and whether discharge should cost debtors anything at all); *see also* Perez v. Campbell, 402 U.S. 637, 648 (1971) (noting that one of the primary purposes of the Bankruptcy Code is to relieve debtors of past debt so they may start a new economic life) (citations omitted); Williams v. United States Fidelity & Guar. Co., 236 U.S. 549, 554-55 (1915) (finding that the goal of the Bankruptcy Code is to distribute a debtor's remaining assets among creditors and relieve debtors from the "weight of oppressive indebtedness").

79. *See, e.g.*, Victoria Henges, *Canons of Construction Take Aim: Ascertaining the Proper Burden of Proof for Fraud Under Section 523(a)(2)(A)*, 59 UMKC L. REV. 321, 329 n.72 (1991) (citing H.R. REP. NO. 95-595, at 3-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965-66) (discussing the legislative history of the 1978 Bankruptcy Act and noting that Congress had two central purposes for the Act: to equally and efficiently distribute assets among creditors, and to ensure that the debtor will not "be left destitute and a public charge").

80. *See, e.g.*, Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (noting that Congress intended the bankruptcy provisions to further both public and private interests); *see also* MICHAEL J. MANDEL, THE HIGH-RISK SOCIETY: PERIL AND PROMISE IN THE NEW ECONOMY 10-11, 57-70 (1996) (arguing that bankruptcy helps create opportunities for risk-taking, which in turn yields significant economic benefits such as the creation of new jobs); RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 399-405 (4th ed. 1992) (arguing that bankruptcy can impose severe social losses which affect debtors, creditors and society).

81. *See, e.g.*, Straton v. New, 283 U.S. 318, 320-21 (1931) (discussing the role of the courts in promoting the policies of the bankruptcy system); *see also* Robert K. Rasmussen, *A Study of the Costs and Benefits of Textualism: The Supreme Court's Bankruptcy Cases*, 71 WASH. U. L.Q. 535, 547-51 (1993) (recognizing that a collective bankruptcy proceeding increases administrative efficiency and maximizes the expected return of creditors).

82. *See* DAVID G. EPSTEIN ET AL., BANKRUPTCY § 1-2 (1993) (noting that although bankruptcy is a debt collection system for creditors, it also helps to sort out the rights of various claimants against the debtor's assets).

83. *See* Douglas G. Baird, *Loss Distribution, Forum Shopping, and Bank-*

tees can use avoidance powers to re-transfer assets to the bankruptcy estate.[84]

2. Fraudulent Conveyance Requirements of 11 U.S.C. § 548

The Bankruptcy Code codifies the elements of a fraudulent conveyance in 11 U.S.C. § 548. Actual intent to defraud is sufficient to establish a fraudulent conveyance[85] but is not required.[86] The Bankruptcy Code provides a remedy that treats "constructive fraud" in the same fashion as fraud committed with actual intent.[87] To prove a fraudulent conveyance has occurred, the bankruptcy trustee must prove by a preponderance of the evidence that: (1) the debtor transferred an interest in property;[88] (2) the debtor made the transfer no more than one year prior to filing the bankruptcy petition;[89] (3) the debtor was insolvent on the date the transfer was made or became insolvent as a result of the transfer;[90] and (4) the debtor received less than reasonably equivalent value in exchange for the transfer.[91]

Often in the course of litigation, the most hotly contested issue is whether the transferor actually received "reasonably

---

ruptcy: A Reply to Warren, 54 U. CHI. L. REV. 815, 816-17 (1987) (discussing the traditional view of bankruptcy policy).

84. *See generally* 11 U.S.C. §§ 365, 547, 548, 544(b) (1994) (providing the bankruptcy trustee with the power to void preferences, fraudulent transfers, executory contracts and other transfers voidable under applicable state law).

85. *Id.* § 548(a)(1).

86. *Id.* § 548(a)(2).

87. In addition, courts have implied actual fraud via the traditional "badges of fraud." EPSTEIN, *supra* note 82, at 368-69. Courts will imply actual fraud where:

> (1) the transfer or obligation was to an insider;
> (2) the debtor retained possession or control of the property transferred after the transfer;
> (3) the transfer or obligation was disclosed or concealed;
> (4) the transfer was of substantially all of the debtor's assets;
> (5) the value of the consideration received by the debtor was [not] reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
> (6) the debtor was insolvent or become insolvent shortly after the transfer was made or the obligation was incurred; and
> (7) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

UNIF. FRAUDULENT TRANSFER ACT § 4(b).

88. 11 U.S.C. § 548(a).

89. *Id.*

90. *Id.* § 548(a)(2)(B)(i).

91. *Id.* § 548(a)(2)(A).

equivalent value" in exchange for the asset transferred.[92] Although value can incorporate both direct[93] or indirect[94] benefits, indirect economic benefits must still be "fairly concrete" for them to be "reasonably equivalent."[95]

3. Tithing as a Fraudulent Conveyance

Since contributions to churches are generally voluntary and in no way linked to the availability of a church's religious services,[96] a tithe, by its very nature, is given in good faith and not for the reasonably equivalent value of worldly goods.[97] Economic benefits analysis does not necessarily require that transferred property be replaced with something tangible or leviable.[98] A tithe, however, often does not even result from the traditional bargained-for exchange.[99] In certain circumstances, courts have held that debtors obtained reasonably equivalent value for their tithes. Generally, these circumstances are limited to situations where the church requires a donation to ob-

92. There are two distinct issues within the analysis of the final element: (1) whether the debtors receive "reasonably equivalent value," and (2) whether the transfers are "in exchange for" the "value." *Id.* A determination of whether the debtor received reasonably equivalent value depends on the facts of each case. First Nat'l Bank v. Minnesota Utility Contracting, Inc. (*In re* Minnesota Utility Contracting, Inc.), 110 B.R. 414, 419 (Bankr. D. Minn. 1990); Joshua Slocum, Ltd. v. Boyle (*In re* Joshua Slocum, Ltd.), 103 B.R. 610, 618 (Bankr. E.D. Pa. 1989), *aff'd*, 121 B.R. 442 (E.D. Pa. 1989).

93. "Reasonably equivalent value" in bankruptcy has traditionally referred to a tangible benefit or an economic value and not merely religious or spiritual value. Morris v. Midway S. Baptist Church (*In re* Newman), 183 B.R. 239, 246 (Bankr. D. Kan. 1995), *aff'd*, No. 95-1228-WEB, 1996 WL 711319 (D. Kan. Nov. 26, 1996).

94. The Bankruptcy Code defines "value" as "property, or satisfaction or securing of a present or antecedent debt of the debtor." 11 U.S.C. § 548(d)(2)(A). Reasonably equivalent value does not necessarily require equivalent monetary proportions to be exchanged. Wilson v. Upreach Ministries (*In re* Missionary Baptist Found. of Am.), 24 B.R. 973, 979 (N.D. Tex. 1982).

95. Courts have cautioned, however, that, "[i]n determining whether a debtor has received fair consideration for the transfer, the court should consider the purpose of the requirement, which is to conserve the debtor's estate for the benefit of creditors." *First Nat'l Bank*, 110 B.R. at 420 (citations omitted).

96. Fitzgerald v. Magic Valley Evangelical Free Church, Inc. (*In re* Hodge), 200 B.R. 884, 893 (Bankr. D. Idaho 1996).

97. Steven Hopkins, *Is God a Preferred Creditor? Tithing as an Avoidable Transfer in Chapter 7 Bankruptcies*, 62 U. CHI. L. REV. 1139, 1144 (1995).

98. EPSTEIN, *supra* note 82, § 6-49.

99. As one court indicated, very often in Judeo-Christian religions, the practice of tithing does not include quid pro quo contributions where there is an exchange of services. *In re Hodge*, 200 B.R. at 893.

tain membership[100] or the tithe is required as a condition of employment.[101]

II. *CHRISTIANS V. CRYSTAL EVANGELICAL FREE CHURCH*

In *Christians v. Crystal Evangelical Free Church*,[102] the Eighth Circuit held that, under the Religious Freedom Restoration Act (RFRA), a bankruptcy trustee is not entitled to recover transfers to a church even if they are fraudulent conveyances.[103] As the first appellate court to decide this issue, the Eighth Circuit defined and applied RFRA's "compelling government interest" standard within the context of bankruptcy law.[104]

A. FRAUDULENT TRANSFERS UNDER 11 U.S.C. § 548(a)(2)

The *Christians* court first addressed the issue of whether tithes can appropriately be characterized as fraudulent conveyances under the Bankruptcy Code. Noting that actual fraudulent intent[105] is not required to recover a fraudulent transfer made within one year of filing a bankruptcy petition,[106] the Eighth Circuit analyzed whether the Youngs' tithes were voidable transfers.[107] In the course of deciding whether the Youngs received "reasonably equivalent value"[108] in ex-

100. *See, e.g., In re* Bien, 95 B.R. 281, 281 (Bankr. D. Conn. 1989) (stating that the church *required* its members to tithe).

101. One case found the debtor and church received reasonably equivalent value in part because a church required him to tithe in order to retain his position as the church deacon. Ellenberg v. Chapel Hill Harvester Church, Inc. (*In re* Moses), 59 B.R. 815, 818 (Bankr. N.D. Ga. 1986). Because of this requirement and the court's ability to easily value the exchanged consideration, the church was allowed to retain the debtors' transfers of $4700 in tithes. *Id.* at 819-20.

102. 82 F.3d 1407 (8th Cir. 1996).

103. *Id.* at 1420.

104. *Id.* at 1419-20.

105. 11 U.S.C. § 548(a)(2)(A) only requires "constructive fraud" and not an actual intent to defraud. *See supra* notes 87-91 and accompanying text (discussing the requirements of constructive fraud).

106. *Christians*, 82 F.3d at 1414.

107. *Id.* Because the parties stipulated that there was a transfer made within one year of filing their bankruptcy petition that they made while insolvent, the exchange of reasonably equivalent value was the only element at issue. Christians v. Crystal Evangelical Free Church (*In re* Young), 148 B.R. 886, 887-88 (Bankr. D. Minn. 1992), *aff'd*, 152 B.R. 939 (D. Minn. 1993), *rev'd*, 82 F.3d 1407 (8th Cir. 1996).

108. To avoid valuing church services, the Eighth Circuit assumed that the

change for their contributions to the Church,[109] the court found the Youngs' contributions were purely voluntary and not linked to the availability of church services.[110] The court concluded that, because the Youngs did not receive the Church's religious services "in exchange for" their tithes, their contributions were voidable transfers within the meaning of 11 U.S.C. § 548(a)(2).[111] Having resolved initially the applicability of § 548(a), the court then considered whether requiring the Church to return the contributions violates the Free Exercise Clause and, in turn, whether the administration of the Bankruptcy Code is a compelling government interest under RFRA.[112]

B. APPLICATION OF THE RELIGIOUS FREEDOM RESTORATION ACT

Although the Youngs filed their bankruptcy petition prior to the passage of RFRA,[113] the *Christians* court determined it could retroactively apply RFRA to the Youngs' case.[114] The court first noted that because the Eighth Circuit "has applied the RFRA in other cases without questioning its constitutional-

---

contributions and the church services were "reasonably equivalent." *Christians*, 82 F.3d at 1415 n.4.

109. The Eighth Circuit found the district court, "correctly examined 'all aspects of the transaction and carefully measure[d] the value of all benefits and burdens to the debtor, direct or indirect,' including 'indirect economic benefits.'" *Id.* at 1415 (citation omitted). Building on the notion that indirect economic benefits must be "fairly concrete," the Eighth Circuit did not define property or indirect economic benefits purely in terms of equitable rights or ownership interests. *Id.* The Eighth Circuit did not rule, however, whether intangible religious services the Youngs received from their church constituted a viable property interest. *Id.*

110. *Id.* The Eighth Circuit pointed out that the Church provided services to members and conducted worship services independent of the Youngs' contributions. *Id.*

111. *Id.* at 1415-16.

112. *Id.* at 1413.

113. Because RFRA was passed after the Youngs' bankruptcy case was initiated, questions about the application or constitutionality of RFRA were not presented to the district court. *Id.* at 1412. Arguments that voiding the Youngs' tithe violated the Free Exercise and Establishment Clauses were raised for the first time on appeal to the district court. *Id.* at 1411. Although the Eighth Circuit indicated that it was technically addressing the "Free Exercise of Religion," it did not examine the constitutional issue raised by the Free Exercise Clause of the First Amendment under the *Smith* doctrine, but instead dealt exclusively with the application of RFRA. *Id.* at 1416-20.

114. *Id.* at 1417. Noting that RFRA itself specifically provides for "implementation" to federal laws adopted before November 16, 1993, the court concluded that it could retroactively apply RFRA since it involves the implementation of federal bankruptcy law. *Id.* at 1416-17. The court also noted other circuits and bankruptcy courts applied RFRA retroactively. *Id.* at 1417.

ity" it thus "has at least implicitly held that the RFRA is constitutional."[115]

Next, the court addressed whether, under RFRA, the government's act of voiding a tithe substantially burdened the Youngs' free exercise of religion.[116] Adopting the Tenth Circuit standard,[117] the court held that it was a substantial burden.[118] The *Christians* court emphasized that even though tithing is not "religiously compelled,"[119] permitting the government to recover church tithes preceding the filing of a bankruptcy petition, "meaningfully curtails, albeit retroactively, a religious practice of more than minimal significance in a way that is not merely incidental."[120]

Having established that the fraudulent conveyance provision substantially burdened the Youngs, the court considered whether a compelling government interest justified the burden.[121] Noting that RFRA does not define "compelling governmental interest," the court examined pre-*Smith* case law,[122] post-*Smith* Establishment Clause cases,[123] and other cases ap-

115. *Id.* This case did not specifically question the constitutionality of RFRA. *Id.*

116. *Id.* The court noted that under RFRA whether government action substantially burdens religious practice is a threshold issue for the court. *Id.*

117. *Id.* at 1418 (citing Werner v. McCotter, 49 F.3d 1476, 1480 (10th Cir. 1995)).

118. *Id.*

119. Although the Youngs' church encouraged but did not compel tithing, the court found that, for the Youngs, tithing was a religiously motivated practice expressing their sincerely held religious beliefs. *Id.*

120. *Id.* at 1418-19 (citations omitted). The court also indicated it construed "substantial burden" broadly in order to be consistent with RFRA's stated purpose of restoring pre-*Smith* free exercise standards of evaluation. *Id.* at 1418.

121. *See id.* at 1419-20 (applying RFRA to the Youngs' case).

122. The *Christians* court specifically referred to *Hernandez* and indicated that the "government has a compelling interest in maintaining the tax system." *Id.* at 1419 (citing Hernandez v. Commissioner, 490 U.S. 680, 699 (1989)). The court also indicated the "government has a compelling interest in enforcing participation in the social security system." *Id.* (citing United States v. Lee, 455 U.S. 252, 258-59 (1982)). It also found the government has a compelling interest in maintaining national security, public safety and providing public education. *Id.* (citations omitted). In contrast, the court pointed out that *Sherbert* found no compelling governmental interest in preventing fraud within the unemployment compensation system. *Id.* (citing Sherbert v. Verner, 374 U.S. 398, 406 (1963)).

123. The court noted that post-*Smith* cases described compelling governmental interests as interests of the highest order. *Id.* at 1418.

plying RFRA.[124] Relying heavily on *In re Tessier*,[125] a Montana bankruptcy case that interpreted the compelling interest requirement to include " 'only those interests pertaining to survival of the republic or the physical safety of its citizens,' "[126] the court found bankruptcy is not a government interest comparable to national security or public safety.[127] Conceding that giving debtors a fresh start and protecting the interests of creditors is important,[128] the court nevertheless held that these interests are not comparable to collecting revenue through the tax system or ensuring the fiscal integrity of the social security system.[129] Ultimately, the *Christians* court determined that no compelling government interest warranted the substantial burden on the Youngs' free exercise of religion.[130] Accordingly, the trustee was not entitled to recover the $13,450 from Crystal Evangelical Free Church.[131]

---

124. Similar to pre-*Smith* case law, the *Christians* court noted that cases applying RFRA have held that there is a compelling interest in enforcing participation in the social security system. *Id.* (citing Droz v. Commissioner, 48 F.3d 1120, 1122-23 (9th Cir. 1995)). The court also noted that maintaining safety and security in prisons and schools constituted a compelling government interest. *Id.*

125. Although the *Christians* court agreed with *Tessier*'s analysis of what constitutes a compelling government interest, the Eighth Circuit ignored the *Tessier* court's ultimate holding that RFRA was unconstitutional. *Id.* at 1420.

126. *Id.* (quoting *In re* Tessier, 190 B.R. 396, 405 (Bankr. D. Mont. 1995)). Although the court noted that, as a Chapter 13 case, *Tessier* is procedurally different from the Youngs' case, it also noted that it was substantively quite similar. *Id.*

127. Similar to *Tessier*, *Christians* found that although the government clearly has interests in providing a debtor with a fresh start, protecting the interests of creditors, and efficiently administering bankruptcy cases, these are not "sufficiently grave to deserve the 'compelling' label when balanced against a parishioner's free exercise of religion." *Id.* (citation omitted).

128. *Id.* at 1419-20 (citing Morris v. Midway S. Baptist Church (*In re* Newman), 183 B.R. 239, 252 (Bankr. D. Kan. 1995)).

129. Reasoning that an exemption would be limited to the debtor's creditors, the court found that allowing an exemption did not undermine the integrity of the bankruptcy system as a whole. *Id.* at 1420.

130. The court found that because there was no "compelling" government interest, it did not need to consider whether the governmental action is the least restrictive means available of furthering the government interest. *Id.*

131. *Id.*

III. *CHRISTIANS V. CRYSTAL EVANGELICAL FREE CHURCH:* AN UNCOMPELLING VERSION OF THE "COMPELLING INTEREST" TEST

Although the *Christians* court correctly decided the Youngs' tithes were fraudulent conveyances under the Bankruptcy Code,[132] *Christians v. Crystal Evangelical Free Church* sets a dangerous precedent for interpreting RFRA in bankruptcy proceedings. First, the court's determination that a retroactive action was a substantial burden on the Youngs' free exercise of religion[133] ignores the fact that retroactive voiding only applies in extremely limited circumstances, creates a minimal interference with their ability to tithe, and merely makes their current religious practice more expensive. Second, the *Christians* court construed the compelling government interest test too narrowly.[134] In doing so, the court failed to give adequate consideration to the importance of efficiently administering the Bankruptcy Code to effectively meet public and private interests. Finally, by declining to engage in statutory interpretation,[135] the *Christians* court failed to provide a meaningful analysis of RFRA. Consequently, future courts should reject *Christians* and instead apply RFRA as a functional balancing test. This approach appropriately considers the competing interests of religious debtors and the public interests underlying the Bankruptcy Code.

A. TITHING AS A FRAUDULENT CONVEYANCE

Relying upon its conclusion that the Youngs' religious tithe was not given "in exchange for" consideration, the *Christians* court correctly determined that the Youngs' gratuitous transfer constituted a fraudulent conveyance under 11 U.S.C. § 548(a)(2). Even though the court failed to adequately address whether the Youngs received "reasonably equivalent value,"[136] the court

132. *See supra* notes 105-111 and accompanying text (discussing the *Christians* court's fraudulent conveyance analysis of the Youngs' tithe).

133. *See supra* notes 118-120 and accompanying text (discussing the *Christians* court's finding the Youngs were substantially burdened even though there was only a retroactive application upon completed religious observances).

134. *See supra* note 130 and accompanying text (discussing the high threshold the *Christians* court adopts for finding a compelling interest).

135. *See supra* note 115 and accompanying text (noting that the *Christians* court specifically declined to consider the constitutionality of RFRA).

136. Although the court noted that "reasonably equivalent value" can be direct or indirect, it failed to adequately discuss whether the religious benefits

properly examined whether the transfer involved a quid pro quo exchange. Unlike *In re Moses*, where a church required an individual to tithe in order to maintain his official position as deacon,[137] the Youngs' tithes were not linked to employment or the receipt of church services. Further, because the Church did not require its members to tithe, the Youngs did not bargain for the religious services provided by their church and instead gave the money of their own free will. Under this rationale, there is no bargained-for consideration that meets the statutory requirement that the transfer be "in exchange" for value.[138] Consequently, the Youngs' tithes fell within the statutory definition of a fraudulent conveyance.

B. MISAPPLICATION OF THE SUBSTANTIAL BURDEN TEST

To examine what constitutes a "substantial burden,"[139] "compelling government interest,"[140] or "least restrictive means,"[141] future courts should look to previous First Amend-

---

are concrete enough to have a definite economic value. Here, there is no evidence that intangible religious satisfaction or the personal happiness obtained from fulfilling a religious practice is "concrete." *Cf.* Morris v. Midway S. Baptist Church (*In re* Newman), 183 B.R. 239, 247-48 (Bankr. D. Kan. 1995) (finding that the court cannot put a value on the services and intangible support offered by a church since "spiritual value" cannot be given a dollar value), *aff'd*, No. 95-1228-WEB, 1996 WL 711319 (D. Kan. Nov. 26, 1996). Similarly, the court ignored precedent indicating spiritual satisfaction cannot constitute "reasonably equivalent" value. *See supra* note 93 and accompanying text (noting that a "reasonably equivalent value" has traditionally referred to a tangible economic benefit). Although the court could easily determine the value the Church obtained by examining the amount of money they received, there is no similar indicia that the Youngs' received some type of concrete value.

Even though the Youngs did receive services from the Church, there is no evidence these services were directly related to the Youngs' tithing practices. Therefore, the court's assumption that these values are "reasonably equivalent" is flawed. If, however, the Youngs demonstrate a direct relationship between the tithes and the services provided and a bargained-for exchange, it may be possible to evaluate the services provided by a church, such as counseling, in terms of their fair market value to determine if these linked values are reasonably equivalent. *See, e.g.*, Ellenberg v. Chapel Hill Harvester Church, Inc. (*In re* Moses), 59 B.R. 815, 818-19 (Bankr. N.D. Ga. 1986).

137. *See supra* note 101 (describing the holding of *In re Moses*).

138. *See supra* notes 100-101 and accompanying text (describing the limited circumstances in which courts have found tithing to be a reasonably equivalent exchange).

139. 42 U.S.C. § 2000bb-1(b) (1994).

140. *Id.* § 2000bb-1(b)(1).

141. *Id.* § 2000bb-1(b)(2).

ment free exercise case law.[142] Unfortunately, the *Christians* court inappropriately discounted controlling free exercise jurisprudence and inappropriately relied primarily on one post-RFRA decision.[143]

1. Substantial Burden upon Religion

The *Christians* court created an overly broad standard for determining what constitutes a "substantial burden"[144] ignoring pre-RFRA and post-RFRA cases which held that simply making a religious practice more expensive does not create a significant burden upon religion.[145] To the extent that voiding a past tithe creates an obligation for the Youngs to provide more money to their church in the future, § 548(a) merely makes the Youngs' current religious practices more expensive.[146] Because the government is not required to subsidize constitutionally guaranteed rights, a mere increase in the cost of tithing cannot be a substantial burden upon religion.[147]

The *Christians* court also glossed over the issue of whether a provision limiting religious exercise after the fact can create a substantial burden.[148] Merely because the court felt § 548 would "effectively prevent the debtors from tithing." it determined that a government act affecting a completed religious practice created a substantial burden.[149] The court ignored, however, that § 548(a)(2) did not prevent the Youngs' tithing.[150]

---

142. *See supra* notes 16-35 and accompanying text (discussing First Amendment jurisprudence prior to the passage of RFRA).

143. Christians v. Crystal Evangelical Free Church (*In re* Young), 82 F.3d 1407, 1418-20 (8th Cir. 1996).

144. *Id.* at 1418. *But cf.* Hernandez v. Commissioner, 490 U.S. 680, 680-81 (1989) (noting that contributions to the Church of Scientology were required by practitioners); *In re* Gaukler, 63 B.R. 224, 225 (Bankr. D.N.D. 1986) (discussing that the Worldwide Church of God requires its members to tithe 10% to the church).

145. *See supra* note 52 (noting that burdening an individual's religious freedom by making exercise more expensive is not sufficient to rise to the level of a "substantial burden" upon religious practice).

146. Moreover, simply because a freedom has been granted by the constitution does not necessarily mean that the individual must realize all the advantages of the freedom—particularly when economic concerns are implicated. *See supra* notes 16-21 and accompanying text (discussing the limitations on religious freedom wrought by the *Reynolds* decision).

147. *See supra* note 52 (discussing the *Goodall* holding).

148. The *Christians* court gave only the briefest mention to the issue of retroactivity as a substantial burden. *Christians*, 82 F.3d at 1418-20.

149. *Id.*

150. Despite the court's theoretical assertion that § 548 affected the

As in *In re Newman*, the Youngs already freely exercised their religion by placing money in the church offering plate.[151]

Additionally, there is no substantial burden upon the Youngs' religious exercise because they filed a Chapter 7 petition. Under a Chapter 13 bankruptcy petition, a court can reject a reorganization plan and prevent the debtor from tithing over the course of the plan if it believes a debtor's proposed tithes are not reasonably necessary.[152] Voiding a transfer in a Chapter 7 liquidation, however, attacks a third party and not the current tithing practices of a religious debtor. Instead of burdening the Youngs' previous religious observances, the trustee is merely requesting that the Church return money to the bankruptcy estate.[153] Consequently, voiding a "fraudulent transfer" in a Chapter 7 liquidation does not have the same effect upon a debtor's religious practices[154] as conditioning the approval of a Chapter 13 bankruptcy plan upon the cessation of a religious activity.[155]

Youngs' tithing practices, *id.*, the Youngs continued to tithe in the year prior to filing their bankruptcy petition. *Id.* at 1410.

151. *See supra* note 56 and accompanying text (noting the *In re Hodge* court's determination that there is no substantial burden upon religion since the funds the trustee sought to recover were already tithed).

152. *See supra* note 58 (discussing the procedural differences between a Chapter 13 reorganization and a Chapter 7 liquidation bankruptcy).

153. 11 U.S.C. § 548 (1994); *see supra* Part I.C.2 (discussing the process of proving a fraudulent conveyance).

154. The important part of tithing involves the good-faith, free-will transfer of property to the church as paying homage to God. *See supra* note 2 and accompanying text (describing the nature of tithing). Technically, the Youngs have already engaged in this transfer and paid their respects to God. For the purposes of Chapter 7, their religiously motivated practices are complete. Voiding the transfer does not punish the Youngs for tithing—there are no punitive penalties attached. Instead, it merely recoups the money from a third party. This is a separate and distinct question from whether the removal of money from a church's bank account burdens its ability to freely practice religion and minister to the needs of its congregation.

155. Specifically in a Chapter 13 bankruptcy, the court's approval of a bankruptcy plan is contingent upon the court finding that the monthly expenses are "reasonably necessary." 11 U.S.C. § 1325(b)(2). Currently, courts are split as to whether tithing is a reasonably necessary expense. While some courts have approved plans which include "reasonable" tithes, other courts have denied approval of Chapter 13 reorganization plans. *See supra* note 58 and accompanying text (discussing how courts have dealt with tithing under Chapter 13).

2. Compelling Government Interest

The conflict in *Christians*—particularly within the context of bankruptcy law—provides a rare opportunity to reconcile the competing policy considerations underlying the Free Exercise Clause and set standards for defining a "compelling government interest." Although the court correctly noted RFRA does not define "compelling interest,"[156] the *Christians* court inappropriately determined that compelling interests can only be those of the highest order—national security or public safety.[157]

Initially, the court relied upon *Church of Lukumi Babalu Aye v. City of Hialeah*[158] to support the assertion that only national security or public safety are compelling government interests.[159] The court failed, however, to note that *Lukumi* did not involve a generally applicable statute, such as the Bankruptcy Code, but an ordinance discriminating against a specific religion. Such specific discrimination would be justified only by these narrow interests. A statute that applies generally to all of the interests in administering a government program, however, may be compelling outside national security or public safety.[160]

In addition to misapplying *Lukumi*, the court improperly relied upon only one post-RFRA case in the face of strong precedent to the contrary.[161] The court appropriately examined pre-*Smith* and post-RFRA case law,[162]—particularly bankruptcy cases[163]—which determined that both the Bankruptcy

156. Christians v. Crystal Evangelical Free Church (*In re* Young), 82 F.3d 1407, 1419 (8th Cir. 1996).

157. *Id.* at 1419-20.

158. 508 U.S. 520 (1993).

159. *Christians*, 82 F.3d at 1419.

160. *See supra* notes 26-31, 59, 62 and accompanying text (discussing cases asserting compelling governmental interests beyond national security or public safety).

161. In contrast to *Reynolds*, the *Christians* court does not engage in a historical analysis discussing the role of fraudulent conveyances and bankruptcy as an important feature of social life and undercuts the value of these historically important systems. *See supra* notes 16-21, 73-84 and accompanying text (reviewing the historical basis of polygamy and the social goals, costs, and benefits of filing bankruptcy).

162. The court noted previous case law indicates the government has a compelling interest in maintaining the tax system, enforcing participation in the social security system, maintaining national security and public safety, and providing public education. *Christians*, 82 F.3d at 1419 (citations omitted).

163. *See, e.g.*, Morris v. Midway S. Baptist Church (*In re* Newman), 183

Code as a whole and the fraudulent conveyance statute in particular served a compelling government interest. Despite its awareness of these cases, the court failed to distinguish them and stubbornly relied on *In re Tessier* to find that bankruptcy is not a compelling interest. Even though *In re Tessier* determined RFRA was unconstitutional,[164] *Christians* agreed with *In re Tessier* that " 'only those interests pertaining to the survival of the republic or the physical safety of its citizens' " can constitute a compelling government interest.[165] Consequently, despite the government's interests in providing debtors with a fresh start and protecting the interests of creditors, *Christians* determined that bankruptcy is not comparable to national security and public safety.[166]

Similarly, the court offered minimal persuasive argument in its efforts to distinguish the Bankruptcy Code from the social security system and the Internal Revenue Code. Instead of providing a reasoned analysis for its assertion that bankruptcy is not comparable to these two systems, the court simply agreed with *In re Tessier*.[167]

The court supported its non-compelling interest conclusion by narrowly focusing on the fact that creating an exception for religious practices will only affect the Youngs' creditors.[168] Yet, if prior case law focused only upon the law's effects on individuals, instead of examining the overall maintenance and integrity of important governmental programs, those cases would have reached completely different results.[169] By intentionally

---

B.R. 239, 251-52 (Bankr. D. Kan. 1995), *aff'd*, 1996 WL 711319 (D. Kan. Nov. 26, 1996); *In re* Navarro, 83 B.R. 348, 353 (Bankr. E.D. Pa. 1988).

164. *In re* Tessier, 190 B.R. 396, 406-07 (Bankr. D. Mont. 1995).

165. *Christians*, 82 F.3d at 1420 (citing *In re Tessier*, 190 B.R. at 405).

166. *Id.* Although the *Christians* court suggests it does not wish to interpret the compelling government interest standard as narrowly as *Tessier*, in effect, the court does. By carefully framing the issue in terms of whether bankruptcy is "comparable to national security," *Christians* frames the application of RFRA as resurrecting the high-water mark of national security that was only articulated in *United States v. Gillette*. *Id.* Moreover, the court also ignores that *Tessier* failed to adequately explain why *Lee*, *Hernandez*, and *Droz* are not controlling precedent. *In re Tessier*, 190 B.R. at 401-02.

167. *Christians*, 82 F.3d at 1419-20. If the court had instead reasoned that because the voluntary nature of filing a bankruptcy petition is more similar to the voluntary nature of filing for unemployment benefits, this analysis would have been more compelling. Thomas v. Review Bd., 450 U.S. 707, 716 (1981); Sherbert v. Verner, 374 U.S. 398, 406 (1963).

168. *Christians*, 82 F.3d at 1420.

169. *See, e.g.*, Hernandez v. Commissioner, 490 U.S. 680 (1989); United States v. Lee, 455 U.S. 252 (1982); Droz v. Commissioner, 48 F.3d 1120 (9th

ignoring the systemic ramifications upon bankruptcy law, while simultaneously defining "compelling government interest" with an incredibly high water mark, the *Christians* court itself fails to provide a "compelling" analysis for why it followed *In re Tessier*.[170]

3. Least Restrictive Means

The *Christians* court effectively ends its analysis without considering whether § 548(a)(2) is the least restrictive means of furthering a compelling government interest.[171] The least restrictive means test is already incorporated in the determination of whether a government interest is compelling[172] and essentially requires narrowly tailored government action.[173]

C. A BETTER APPROACH: INTERPRETING RFRA AS A FUNCTIONAL BALANCING TEST

Because the court applied RFRA without engaging in meaningful statutory interpretation, future courts should not follow its analysis. Accordingly, future courts should engage in more detailed and comprehensive statutory interpretation and use the canons of construction[174] to apply RFRA constitutionally within the context of bankruptcy.[175]

Cir. 1995), *cert. denied*, 116 S. Ct. 698 (1996).

170. Moreover, the *Christians* court also failed to consider the statutory command of RFRA to implement the compelling interest test as modified by prior court decisions. 42 U.S.C. § 2000bb-(a)(5) (1994). By reinstating such a stringent standard for evaluating a compelling government interest, *Christians* also ignores that the legislative history indicates RFRA was not meant to reinstate the "high water mark" of *Sherbert* and *Yoder*, but merely to return free exercise scrutiny to the level that existed prior to *Smith*. Anderson, *supra* note 1, at 205 (citing H.R. REP. NO. 103-88, at 15 (1993)).

171. *Christians*, 82 F.3d at 1420.

172. *See supra* note 67 and accompanying text (discussing use of the "least restrictive alternative" test prior to *Smith*).

173. The Eighth Circuit itself has found these requirements to be synonymous. Hamilton v. Schriro, 74 F.3d 1545, 1554 (8th Cir. 1996).

174. Some schools of legislative interpretation rely primarily upon text where the interpreter simply follows the ordinary meaning of the explicit statutory language. While intentionalism attempts to follow the original intent of the enacting legislature, purposivism involves choosing the best method to carry out the specific purpose of the statute. WILLIAM N. ESKRIDGE, JR. & PHILIP P. FRICKEY, LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 514 (2d ed. 1995).

175. *Christians*, 82 F.3d at 1416-20. *But cf.* Rasmussen, *supra* note 81, at 535 (noting that despite the many alternative methods available "[t]he Supreme Court has taken a turn toward text" in bankruptcy decisions).

1. Textual Canons: Interpreting Purposes vs. Findings

The textual canons of interpretation are currently the preferred method of Supreme Court statutory analysis and, thus, are the most commonly used strategy for interpreting the Bankruptcy Code.[176] In contrast to the official statement of purposes which promotes the *Sherbert* compelling interest test,[177] RFRA includes a statement of findings that indicates "the compelling interest test *as set forth in prior Federal court rulings* is a workable test for striking sensible balances between religious liberty and competing prior governmental interests."[178] Arguably, the plain meaning[179] of the text requires these findings to modify RFRA's standard of review to include more than the *Sherbert* test. Further, under the Whole Act Rule,[180] future courts should consider these findings to apply more than the standard articulated in *Sherbert* and consider other controlling federal court decisions.

Similarly, future courts should use the Rule to Avoid Surplusage[181] to give more appropriate attention to RFRA's findings and incorporate the limitations of cases such as *Lee* and

176. Rasmussen, *supra* note 81, at 538. Although other legitimate methods of interpretation are available, this Comment will focus primarily on interpreting the direct language of RFRA by applying textual canons of construction.

177. *See supra* note 44 and accompanying text (discussing the statement of purposes set forth in RFRA).

178. 42 U.S.C. § 2000bb(a)(5) (1994) (emphasis added).

179. Use of the "plain meaning" doctrine would have been particularly appropriate since the court's analysis relied heavily upon RFRA's explicit language. Justice Scalia and others have advocated that courts should construe statutes according to their ordinary plain meaning. Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 3 DUKE L.J. 511, 511-12 (1989); *see also* Caminetti v. United States, 242 U.S. 470, 485 (1917) (noting that where statutory meaning is "plain" there is no need for additional judicial interpretation).

180. The Whole Act Rule enables statutory interpretation to look beyond a particular clause and take into account the whole structure of the statute so as to construe it to execute the will of the enacting legislature. *See* Kokoszka v. Belford, 417 U.S. 642, 650 (1974) ("When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . . .").

181. The Rule to Avoid Surplusage requires the court to construe statutory provisions on the assumption that every phrase adds something to the meaning of the statute. *See* Kungys v. United States, 485 U.S. 759, 778 (1988) (indicating that it is a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant"); Exxon Corp. v. Hung, 475 U.S. 355, 369 n.14 (1986) (noting that if two separate statutory commands are not read "as a unit," one of the phrases is rendered superfluous).

Hernandez.[182] Similarly, applying the Rule Against Interpreting One Provision to Negate Another,[183] future courts should construe the "findings" and "purposes" of the Act together and maximize the implementation of legislative intent. Although both the "findings" and "purposes" are explicitly detailed within the language of the statute, a congressional finding holds more interpretive value because it is less abstract than a general statement of purpose.[184] In essence, although the statement of "purposes" is very specific in its references to the *Sherbert* and *Yoder* compelling interest test, the textual canons require that "findings" modify the stated purposes of RFRA. In this fashion, not only can future courts apply the compelling interest test Congress desired, but they can also apply *Sherbert* as modified by *Lee* and its progeny.[185]

Under this application, RFRA is not merely a rule requiring strict scrutiny, but a rule which encourages functional application and balancing. This interpretation also comports with the plain meaning of RFRA.[186] Because RFRA provides for analysis comporting with *Wisconsin v. Yoder*, courts can engage in the "balancing" process required by that case.[187]

2. The Functional Balancing Test

By modifying the *Sherbert* test through the "prior Federal court rulings,"[188] a different application of RFRA is available. Courts may broadly interpret "substantial burden" and "compelling interest" instead of narrowly construing the terms to

182. *See supra* notes 26-30 and accompanying text (detailing the issues in *Lee* and *Hernandez*).

183. Under the Rule Against Interpreting One Provision to Negate Another, the court must interpret the statute so as to avoid negating or derogating other provisions of the statute. *See* Pennsylvania Dep't of Pub. Welfare v. Davenport, 495 U.S. 552, 562 (1990) (noting that there is a "deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment").

184. *See generally* WILLIAM N. ESKRIDGE & PHILIP P. FRICKEY, LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 514 (2d ed. 1995) (discussing the superiority of using purpose in reading statutes).

185. *See supra* notes 26-33 and accompanying text (discussing the application of a compelling governmental interest test to the maintenance of a tax system).

186. *See supra* note 179 and accompanying text (discussing the use of plain meaning in reading statutes).

187. *See supra* note 33 and accompanying text (discussing the balancing of interests between religious practices and maintaining a tax system).

188. 42 U.S.C. § 2000bb(a)(5) (1994).

set rigid thresholds. In this fashion, courts can flexibly apply RFRA as a functional balancing test that considers the nature of the burden on religion, the burden of providing a religious exemption, and the nature of the governmental interest.[189]

This Comment suggests that even if courts fail to find a traditional "substantial" burden, these courts can broadly label a burden upon religious exercise as "substantial" in order to weigh the burden in comparison to the nature of the government interest. There must be limits to this broad construction, however. For example, if there is merely a financial burden or a retroactive action that does not affect current religious practices of religious debtors,[190] the consequences may not be direct enough to create a burden upon religious exercise.[191]

Additionally, courts should broadly construe the term "compelling government interest" to include bankruptcy. Arguably, since one of the primary purposes of avoidance powers is to increase the money available to unsecured creditors, the concern for unsecured creditors is most apparent within the context of fraudulent conveyance law.[192] Historically, however, fraudulent conveyance law and bankruptcy served other important government interests and constituted an "important feature of social life."[193]

---

189. This functional balancing test implicitly incorporates the least restrictive means test into the balancing process of determining whether burdens are "substantial" and interests are "compelling." *See supra* note 67 and accompanying text (discussing the location of the least restrictive alternative prong in the compelling governmental interests test).

190. *See supra* Part III.B.2 (discussing application of a governmental interest test to the Bankruptcy Code).

191. *See supra* note 52 (discussing the *Goodall* holding that a financial burden is not "substantial").

192. *See supra* notes 78-84 and accompanying text (discussing the goals of bankruptcy and fraudulent transfer laws).

193. *See supra* notes 16-20 and accompanying text (discussing the distinction between religious practice and belief and how the Free Exercise Clause was not meant to defeat regulation of the former). Moreover, that "important feature" is not undercut by exemptions that affect the uniformity of the system. Indeed, despite the vast number of exceptions within the Internal Revenue Code, the Supreme Court still determined the maintenance of the tax system was compelling. Hernandez v. Commissioner, 490 U.S. 680, 689 (1989). If other precedent indicates that 70 years of implementing the Internal Revenue Code is sufficient to sustain a compelling government interest, *id.*, fraudulent conveyance and bankruptcy statutes in effect for over 200 years should also be compelling. However, even if future courts do not find *Reynolds* and *Hernandez* determinative, they must still admit that § 548 itself contains no exceptions.

Further, given the significant rise in the number of bankruptcy filings over the past ten years,[194] the importance of effectively administering the bankruptcy system to an ever increasing number of people is critical. Just as the *Lee* Court expressed concern over administrative efficiency in applying the largest government program, social security, to over 30 million people,[195] the *Christians* court should have recognized the importance of administering another government system to millions of people each year.[196] Moreover, as cases such as *Lee*[197] and *Goehring*[198] indicate, the broad nature of services provided by the Bankruptcy Code supports the notion that bankruptcy administration is a compelling government interest.[199]

While commentators may be correct in noting that administrative efficiency should not be determinative when deciding whether a government interest is compelling,[200] the Bankruptcy Code serves several other important functions. Providing debtors with a fresh start, keeping individuals from becoming public charges, and maximizing both public and private needs in maintaining a healthy economy are additional government interests underlying bankruptcy.[201] Additionally, the Founders specifically provided for congressional powers over

194. *See supra* notes 75 and accompanying text (discussing the threefold increase in the number of bankruptcy petitions filed since 1980).

195. *See supra* notes 26-28 and accompanying text (discussing the scope and coverage of the social security program).

196. *See supra* notes 73-76 and accompanying text (discussing the scope and number of people covered by bankruptcy laws in the United States).

197. *See supra* notes 26-28 (discussing the wide variety of services available under the social security program).

198. *See supra* note 72 (indicating the wide variety of services available through a government program is often helpful in determining whether the administration of the program constitutes a compelling government interest).

199. Aside from providing debtors with discharge from debts and assisting financial reorganization, bankruptcy provides other critical services. *See supra* notes 78-84 and accompanying text (discussing the various goals of bankruptcy law including giving debtors a fresh financial start in life).

200. Paulsen, *supra* note 45, at 278-83 (discussing retroactive application of RFRA and the administrative problems that would follow from such application).

201. *See supra* notes 78-81 and accompanying text (discussing the underlying policy goals of bankruptcy laws).

bankruptcy.[202] Given these factors, bankruptcy law plays a critical role within contemporary American society.[203]

Under a functional balancing test, even if one court holds the interest in the Bankruptcy Code is insufficient to outweigh the burden upon religious freedom,[204] other courts can still consider the historical importance of bankruptcy, as well as interests in ensuring a fresh start and protecting public and private interests.[205] Using this functional balancing approach, restoring the *Sherbert* test does not set a standard of review or a rule of constitutional decisionmaking.[206] This compromise acts as a practical alternative that still allows the Supreme Court to exercise its unique expertise and constitutional mandate to act as the ultimate arbiter of meaning in the Constitution. Rather than viewing RFRA as a legislative fiat, this functional balancing avoids the constitutional questions associated with RFRA[207] and permits courts greater flexibility to implement this statute.

CONCLUSION

In *Christians v. Crystal Evangelical Free Church*, the Eighth Circuit applied RFRA within the context of bankruptcy law and inappropriately resurrected an overly stringent standard of judicial review. The *Christians* court failed to articulate why a statute affecting a completed religious practice constitutes a "substantial burden" on religious activity. By resurrecting a standard of review that only recognizes national security as a "compelling interest," *Christians* fails to give appropriate weight to the important nature of the bankruptcy system. Instead of following *Christians* and requiring com-

---

202. U.S. CONST. art. 1, § 8, cl. 4.

203. *See supra* note 78-84 and accompanying text (discussing the importance of bankruptcy and fraudulent conveyance law).

204. This test will vary according to the severity of religious infringement and the substantive governmental interest in each particular case.

205. *See supra* Part I.C.1 (discussing the policy and personal goals of bankruptcy laws).

206. In this fashion, RFRA is not a "fatal in fact" unconstitutional congressional exercise that negates Supreme Court precedent, but instead it allows for a more flexible balancing of competing interests.

207. This is similar to the balancing test implicitly part of the reasoning in *Wisconsin v. Yoder*, but it avoids setting the explicit standard of decision of *Sherbert* which leads to severe constitutional questions. *See supra* notes 25-35, 47 and accompanying text (discussing the problems associated with a governmental interests test).

plainants to satisfy rigid thresholds, future courts should use the canons of construction to engage in a functional balancing test and construe the competing provisions of RFRA together. Under this approach, courts can maximize the intent of Congress by weighing the competing interests of religious freedom to tithe and administration of the bankruptcy system.