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Through Amos-Colored Glass: The Eighth Circuit Fails to See the RFRA's Real Meaning in Young v. Crystal Evangelical Free Church

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NOTES

THROUGH *AMOS*-COLORED GLASS: THE EIGHTH CIRCUIT FAILS TO SEE THE RFRA'S REAL MEANING IN *Young v. Crystal Evangelical Free Church*, 141 F.3d 854 (8th Cir. 1998)

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I. INTRODUCTION

Recently, in *Young v. Crystal Evangelical Free Church*, the Eighth Circuit held that a bankrupt couple's religious tithes could not be recovered

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by a bankruptcy trustee assembling funds to pay lawful creditors, although the tithes would normally be recoverable under bankruptcy law.[1] The court held that the Religious Freedom Restoration Act ("RFRA") forbade such a recovery because it was a substantial burden on the free exercise of religious belief.[2] Enacted in 1993, RFRA allows the government to "substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest."[3]

The Eighth Circuit's holding resurrects a statute whose demise was thought permanent by many courts[4] following the Supreme Court's 1996 ruling in *City of Boerne v. Flores*[5] that Congress violated the separation of powers by overreaching its Fourteenth Amendment authority to apply RFRA to the states. While other courts have interpreted *Boerne* to

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[1] 141 F.3d 854 (8th Cir. 1998), *cert. denied sub nom.* Christians v. Crystal Evangelical Free Church, 119 S. Ct. 43 (1998). Tithe recovery is governed by Bankruptcy Code, 11 U.S.C. § 548(a)(2)(A) (1998). In pertinent part, the Code reads as follows:

> § 548. Fraudulent transfers and obligations
>
> (a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the dates of the filing of the petition, if the debtor voluntarily or involuntarily—
>
> (1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
>
> (2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
>
> (B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

11 U.S.C. § 548(a)(1)-(2)(B)(i) (1998). Although *Young* prevented the tithe recovery, Congress has since passed the Religious Liberty and Charitable Donation Protection Act to ensure protection of tithes from recovery in bankruptcy proceedings. 11 U.S.C. § 548 (1998), *as amended by* Religious Liberty and Charitable Donation Protection Act of 1998, Pub. L. No. 105-183 (enacted June 19, 1998).

[2] *Young*, 141 F.3d at 863.

[3] 42 U.S.C. § 2000bb-2000bb-4 (1998). RFRA was designed to reinstate the "compelling interest test" for First Amendment evaluations that the Supreme Court declined to use in *Employment Div. v. Smith*, 494 U.S. 872 (1990). The "compelling interest test" was developed in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), to regulate governmental restrictions on the free exercise of religion.

[4] Judicial application of *City of Boerne v. Flores*, 117 S. Ct. 2157 (1996), to both federal and state governments is evidenced in the following cases: Gomes v. Tri-City Baptist Temple, Inc., 219 B.R. 286 (Bankr. D. Or. 1998); United States v. Sandia, 6 F. Supp. 2d 1278 (D.N.M. 1997). The Eighth Circuit is not the only court to conclude that RFRA is constitutional as applied to the federal government. Hodge v. Fitzgerald, 220 B.R. 386 (Bankr. D. Idaho 1998).

[5] 117 S. Ct. at 2162-72.

invalidate RFRA as to both federal and state law,[6] the *Young* court held that RFRA is still a viable constitutional limit on all federal law.[7]

The Eighth Circuit's holding in *Young* is, however, flawed. The court fails to recognize that RFRA suffers from severe constitutional problems. The Supreme Court has ruled that RFRA violates the basic principle of separation of powers. This Note will argue that RFRA also violates the First Amendment's Establishment Clause. After providing an overview of the *Young* litigation and the court's holding,[8] this Note will argue that the Eighth Circuit erroneously interpreted the Supreme Court's Establishment Clause precedent in holding RFRA constitutional,[9] by showing that RFRA has a non-secular purpose, advances religion and threatens excessive government entanglement in religion. Thus, RFRA undeniably violates the Establishment Clause and is unconstitutional. This Note concludes that by relying too heavily on a strained interpretation of the U.S. Supreme Court's decision in *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*[10] the Eighth Circuit misinterpreted the Establishment Clause jurisprudence and, thus, mistakenly blessed RFRA as constitutional.[11]

II. BACKGROUND

A. Procedural History and Facts of Young

In 1992, a bankruptcy trustee brought an adversary proceeding to recover pre-petition tithes paid by debtors Bruce and Nancy Young to their church, claiming that the tithes were fraudulent transfers.[12] Pursuant to the applicable bankruptcy statute, which included tithes as a valid recovery to pay off the bankrupt couple's creditors, the bankruptcy court awarded the trustee summary judgment,[13] and the district court affirmed the ruling.[14]

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6 *See supra* note 4.

7 141 F.3d at 863.

8 *See infra* notes 12-61 and accompanying text.

9 *See infra* notes 62-137 and accompanying text.

10 483 U.S. 327 (1987).

11 *See infra* note 137 and accompanying text.

12 Young v. Crystal Evangelical Free Church, 148 B.R. 886, 896 (Bankr. D. Minn. 1992).

13 *Id.*

14 Young v. Crystal Evangelical Free Church, 152 B.R. 939, 955 (Bankr. D. Minn. 1993).

In 1996, the Eighth Circuit reversed the district court's ruling.[15] The Eighth Circuit acknowledged that the tithes would normally be considered fraudulent transfers under bankruptcy law and, as such, would be recoverable.[16] However, the court held that RFRA's enactment before the appeal precluded recovery of the tithes[17] because tithe recovery violated RFRA by substantially burdening the debtors' free exercise of religion without furthering a compelling state interest.[18]

The bankruptcy trustee petitioned for rehearing en banc but was denied by the Eighth Circuit.[19] The trustee's petition for writ of certiorari was granted by the Supreme Court[20] which vacated the Eighth Circuit's judgment and remanded the case for reconsideration in light of its holding in *City of Boerne v. Flores*[21] that RFRA was unconstitutional, at least as applied to the states.[22]

B. Reasoning and Holding

On remand, the Eighth Circuit was faced with three issues: 1) whether the Supreme Court's ruling in *Boerne*, *i.e.* that RFRA was unconstitutional as applied to the states, had any impact on RFRA's application to the federal government; 2) whether RFRA violated the separation of powers; and 3) whether RFRA violated the Establishment Clause.[23]

First, the Eighth Circuit held that *Boerne* had no impact on RFRA as applied to the federal government.[24] Although the Supreme Court's ruling in *Boerne* applied to the states, language in the opinion had been interpreted in many cases to apply to both federal and state governments.[25] However, the Eighth Circuit chose to read *Boerne* narrowly and ruled that the portion of RFRA applicable to the federal government was fully severable from the portion applicable to the states.[26] The court stated that when the Supreme Court strikes down only one part of a statute, the other

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15 Young v. Crystal Evangelical Free Church, 82 F.3d 1407, 1415 (8th Cir. 1996).

16 *Id.* at 1416-20.

17 *Id.*; Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-2000bb-4 (1998).

18 *Young*, 82 F.3d at 1407.

19 *Id.*

20 Christians v. Crystal Evangelical Free Church, 117 S. Ct. 2502 (1997).

21 117 S. Ct. 2157 (1997).

22 *Id.* at 2172.

23 *Young*, 141 F.3d at 854.

24 *Id.* at 857-58.

25 *See supra* note 4 and accompanying text.

26 *Young*, 141 F.3d at 858.

parts remain in effect unless it is evident that Congress would not have enacted those provisions without the unconstitutional provisions.[27] The Eighth Circuit determined that RFRA's comprehensive purpose to protect religion as evidenced by RFRA's legislative history[28] indicated that Congress would have protected religion from federal governmental interference even if state protection was impossible.[29] Consequently, the court held that the provisions of RFRA applicable to the federal government remained in effect.[30] Thus, by reading *Boerne* narrowly as applying solely to the states, the Eighth Circuit decisively limited *Boerne's* impact.

Second, the Eighth Circuit ruled that RFRA did not violate the separation of powers.[31] The bankruptcy trustee had argued that because RFRA originated in Congress' desire to nullify the Supreme Court's differing approach to First Amendment jurisprudence,[32] RFRA necessarily violated the separation of powers.[33] The court rejected this argument, reasoning that although Congress cannot use legislation to change the Constitution or change the Supreme Court's interpretation of the Constitution, it can use its legislative authority to attain results that differ from Supreme Court interpretation.[34] Stating that the key to resolving the separation of powers issue was to inquire whether Congress acted beyond its authority in applying RFRA to federal law, the Eighth Circuit held that Congress did indeed have the necessary authority to do so.[35] Finding Congress' authority to modify bankruptcy law by means of RFRA in the Constitution's Article I powers, specifically in the Bankruptcy Clause and the Necessary and Proper Clause,[36] the court determined that no separation of powers violation occurred in the application of RFRA to federal law.[37] This placement of Congress' powers in Article I responded to *Boerne's* holding which found Congress exceeded its powers in using Section 5 of the Fourteenth Amendment to apply RFRA to the states.

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[27] *Id.* (citing INS v. Chadha, 462 U.S. 919, 931-32 (1983)).

[28] *See, e.g.*, 139 CONG. REC. S14,461-01 (daily ed. Oct. 27, 1993) (statement of Sen. Coats) (stating that RFRA moves "toward restoration of religious freedom for all Americans. Freedom of religion, freedom of conscience, and freedom of worship are the most fundamental safeguards of the liberty all Americans cherish.").

[29] *Young*, 141 F.3d at 859.

[30] *Id.*

[31] *Id.* at 858-60.

[32] *Id.* at 858, 861-62.

[33] *Id.* at 858.

[34] *Id.*

[35] U.S. CONST. art. I, § 8, cl. 4; U.S. CONST. art. I § 8, cl. 18; *Young*, 141 F.3d at 858.

[36] *Young*, 141 F.3d at 860-61.

[37] *Id.* at 860.

Senior District Judge Bogue's dissent concentrated on the separation of powers issue,[38] stressing that *Boerne's* holding applied to both the state and federal governments.[39] The dissent argued that *Boerne* stood for the principle that Congress' Article I powers cannot intrude upon the principal purpose of the judicial branch without violating the separation of powers.[40] Although agreeing that Congress can amend bankruptcy laws, the dissent argued that Congress did not pass RFRA to amend bankruptcy law but to make a substantive change in First Amendment rights.[41] The dissent argued that the First Amendment's ambiguity limited Congress' legislative authority because the Supreme Court had the power to interpret ambiguous constitutional phrases.[42] Thus, since Congress passed RFRA to change First Amendment jurisprudence because of disagreement over the Supreme Court's interpretation of "free exercise," Congress overstepped its authority and violated the separation of powers.[43]

Third, the Eighth Circuit held that RFRA did not violate the Establishment Clause,[44] which states that "Congress shall make no law respecting an establishment of religion."[45] The court relied on the reasoning of the Supreme Court in *Amos*[46] and its application of the three-pronged test set forth in *Lemon v. Kurtzman*,[47] to assess RFRA's constitutionality under the Establishment Clause.[48] The Supreme Court held that applying a religious accommodation (a Congressional exemption of religious employees and employers) from the general prohibition against religious discrimination in employment found in Title VII of the Civil Rights Act of 1964 did not violate the Establishment Clause.[49] The *Amos*

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[38] *Id.* at 863 (Bogue, J., dissenting). The dissent also argued that even if RFRA was constitutional, RFRA was not violated in *Young* since tithe recovery was not a substantial burden on religious exercise and the bankruptcy code provision was the least restrictive means of furthering a compelling governmental interest. *Id.*

[39] *Id.* at 863-66.

[40] *Id.* at 863.

[41] *Id.* at 865.

[42] *Id.* at 864.

[43] *Id.*

[44] *Id.* at 862.

[45] U.S. CONST. amend. I.

[46] Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987). In *Amos*, non-church member employees, fired from employment at a church-owned organization over their membership status, sued the church for religious discrimination. *Id.* at 332-34.

[47] 403 U.S. 602 (1971).

[48] *Young*, 141 F.3d at 861-63.

[49] *Id.*

holding was highly supportive of accommodations[50] and the *Young* court relied heavily on *Amos*' language to support its holding that the RFRA is constitutional under the *Lemon* test.[51]

Under the *Lemon* test, to be constitutional under the Establishment Clause, a statute must meet three requirements: first, it must have a secular purpose; second, its primary effect must neither advance nor inhibit religion; and third, it must not create an excessive entanglement with religion.[52] Relying on the Supreme Court's statement in *Amos* that exempting religious organizations from neutral laws does not violate the Constitution, the Eighth Circuit held that RFRA met all three prongs of the *Lemon* test.[53]

The court first determined that RFRA had the secular purpose of protecting First Amendment values and that, under *Amos*, "it is hardly impermissible for Congress to attempt to accommodate free exercise values, in line with our happy tradition of avoiding unnecessary clashes with the dictates of conscience."[54] Next, the court decided that RFRA passed *Lemon's* second prong because its primary effect neither advanced nor inhibited religion.[55] This finding was based on the premise stated in *Amos* that the second prong is violated only where government itself advances religion through its own activities and influence.[56] The court decided that with RFRA, Congress merely lifted a burden on religion which allowed churches themselves to advance religion rather than advancing religion itself.[57]

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[50] *Amos* is considered an accommodations case (a category of cases that involve governmental actions structured to assist religion) and is relied upon heavily by RFRA's supporters. Marci A. Hamilton, *The Religious Freedom Restoration Act is Unconstitutional, Period* (visited Nov. 13, 1997) <http://www.law.upenn.edu/conlaw/issues/vol1/num1/hamilton.htm>. *Hodge v. Fitzgerald* noted *Amos*' sympathetic nature towards accommodations and compares to it other accommodations cases, *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989) and *Estate of Thornton v. Caldor*, 472 U.S. 703 (1985). 220 B.R. 386 n.16 (Bankr. D. Idaho 1998). *Hodge* decided that "[t]o the extent that it is difficult to hold RFRA unconstitutional considering only *Amos*, it is equally difficult to hold it constitutional considering only *Caldor* and *Texas Monthly*." *Id.* *Texas Monthly* stated that although some forms of accommodation are constitutionally permitted, a government-directed subsidy given exclusively to a religious organization that is not required by the Free Exercise Clause and either burdens non-beneficiaries or cannot reasonably be seen as removing a significant state-imposed detriment violates the Establishment Clause. 489 U.S. at 1. *Caldor* stated that a state statute giving Sabbath observers an absolute and unqualified right not to work on the Sabbath violated the Establishment Clause. 472 U.S. at 703.

[51] *Young*, 141 F.3d at 854.

[52] *Lemon*, 403 U.S. at 612-13.

[53] *Young*, 141 F.3d at 860.

[54] *Id.* at 862 (quoting Gillette v. United States, 401 U.S. 437, 453 (1971)).

[55] *Id.*

[56] *Id.*

[57] *Id.* at 863.

Finally, the court held that the *Lemon* test's third prong was met since RFRA does not foster excessive governmental entanglement with religion.[58] In making this determination, the court focused on *Amos*' statement that a statute that effects a more complete separation between religion and government does not cause excessive entanglement.[59] Finding that RFRA was designed to prevent entanglement between government and religion by limiting the impact of federal law on religion, the Eighth Circuit determined that RFRA passed *Lemon's* third prong.[60] The Eighth Circuit thus reaffirmed its prior ruling and held that RFRA precluded any recovery of the debtors' tithes under bankruptcy law.[61]

III. ANALYSIS

The *Lemon* test remains the appropriate measure for determining whether governmental activities violate the Establishment Clause.[62] The Eighth Circuit's application of the *Lemon* test, however, is flawed due to its reliance on *Amos*' language as support for RFRA. In accordance with its recent cases that displayed strong support for religious expression,[63] the Eighth Circuit used its interpretation of *Amos* to incorrectly hold that RFRA is constitutional under the *Lemon* test. Peering at *Lemon* through a strained interpretation of *Amos*, the Eighth Circuit failed to appreciate what the *Lemon* test requires of governmental actions which potentially infringe on the Establishment Clause and improperly extended *Amos*' supportive

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[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.* The Supreme Court denied the trustee's petition for writ of certiorari. Christians v. Crystal Evangelical Free Church, 119 S. Ct. 43 (1998). Although the Eighth Circuit's holding protected tithe recovery, Congress circumvented any further legal battles on the issue by passing the Religious Liberty and Charitable Donation Protection Act of 1998. *See supra* note 1.

[62] Agostini v. Felton, 117 S. Ct. 1997 (1997); Stark v. Independent Sch. Dist., 123 F.3d 1068 (8th Cir. 1997).

[63] The Eighth Circuit's recent First Amendment cases display benevolence to religious expression. *See* Moorish Science Temple of Am. v. Benson, No. 95-2549, 1996 U.S. App. LEXIS 12312 (8th Cir. May 29, 1996) (holding that a religious group of inmates could change their names under the Free Exercise Clause); Brown v. Polk County, 61 F.3d 650 (8th Cir. 1995) (stating that the Constitution prohibits hostility to religion and finding that an employee was wrongly told to stop religious proselytizing, witnessing, or counseling while at work); Pulido v. Cavazos, 934 F.2d 912 (8th Cir. 1991) (approving state funding for parochial schools providing Title I remedial educational services); DeArment v. Harvey, 932 F.2d 721 (8th Cir. 1991) (holding that the First Amendment did not preclude application of Fair Labor Standards Act to a church school). *But see* United States v. DeWitt, 95 F.3d 1374 (8th Cir. 1996) (holding that drug use that is not rooted in religion is not protected under the Free Exercise Clause); Hamilton v. Schriro, 74 F.3d 1545 (8th Cir. 1996) (holding that inmate's Free Exercise rights were not violated by a prison requirement for hair length).

language regarding accommodations to validate RFRA's sweeping provisions. While *Amos*' support for accommodation is undisputed, the Eighth Circuit placed undue reliance on *Amos*' persuasive language by failing to evaluate the applicability of *Amos* to RFRA and disregarding *Amos*' warnings on accommodation's limits.

Amos was never intended to put a gloss on the *Lemon* test. In *Amos*, the Supreme Court carefully applied the *Lemon* test to *Amos*' facts of religious discrimination in a non-profit business and consistently confined its language to limit its holding to the facts of that case.[64] The *Amos* Court recognized that the First Amendment is essentially a balancing test between the Free Exercise Clause and the Establishment Clause.[65] For example, even as the Court stated that government may accommodate religion without violating the Establishment Clause, the Court limited that accommodation to "benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference."[66] Furthermore, the Court never expanded *Amos* beyond the case's facts which involved a religious accommodation for a non-profit organization involved in a Title VII discrimination action.[67] These fact-sensitive limits are emphasized in Justice O'Connor's concurring opinion, which stressed that the ruling could not be interpreted to apply to for-profit activities of religious organizations, but merely applied to non-profit activities of religious organizations.[68]

When the Supreme Court cites *Amos* in First Amendment cases, its narrow interpretation of *Amos* is plainly evident. While the Court does cite *Amos* to elaborate basic principles of Establishment Clause jurisprudence,[69] for the most part *Amos* stands for limits on Establishment Clause accommodation and the Court consistently cites *Amos* to emphasize that accommodations are permitted only to the extent that they serve the limited

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[64] Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 327-47 (1987).

[65] *Id.* at 334.

[66] *Id.* (quoting Walz v. Tax Comm'n, 397 U.S. 664, 673 (1970)).

[67] *Id.* at 327-47.

[68] *Id.* at 347 (O'Connor, J., concurring).

[69] Examples of *Amos* citations elaborating basic principles of Establishment Clause jurisprudence include citations in support for the *Lemon* test's continued existence. *See* Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384, 396-98 (1993); County of Allegheny v. ACLU, 109 S. Ct. 3086, 3141 (1989). Likewise, *Amos* is cited to show continuing support for *Walz* in Establishment Clause claims. Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 35 (1989). *Amos* has also been cited to show that some fixed payments treated as charitable deductions are reciprocal. Hernandez v. Commissioner, 109 S. Ct. 2136, 2153-54 (1989).

purpose of lifting a discernable burden on the free exercise of religion.[70] The Court has relied on *Amos* as an example of the restricted nature of accommodations.[71] The Eighth Circuit ignored this precedent, however, and chose to view the *Lemon* test through a selective reading of *Amos* that supported its conclusion that RFRA is constitutional as applied to the federal government.[72]

A. The Lemon *Test's First Prong–The Secular Purpose Requirement*

1. Through *Amos*-Colored Glass

The Eighth Circuit concluded in error that RFRA met the first prong of the *Lemon* test, which requires that a statute have a secular purpose.[73] In analyzing RFRA under this prong, the Eighth Circuit ignored the plain meaning of "secular purpose"[74] and instead employed a broader meaning.[75] The Eighth Circuit interpreted "secular purpose" broadly to include any neutral government action.[76] The court appears to have taken this definition from a sentence in *Amos* which states: "*Lemon's* purpose requirement aims at preventing the relevant governmental decision maker—in this case, Congress—from abandoning neutrality and acting

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[70] Board of Educ. v. Grumet, 512 U.S. 687, 705, 742 (1994) (stating that while the Establishment Clause allows certain accommodations, an otherwise unconstitutional delegation of political power to a religious group cannot be "saved" as a religious accommodation); Lee v. Weisman, 505 U.S. 577, 613, 627, 629, (1992) (stressing that the government must remain neutral and accommodations for religion must lift a "discernable burden on the Free Exercise of religion"); Board of Educ. v. Mergens, 110 S. Ct. 2356, 2371, 2391 n.21 (1990) (stating that the Equal Access Act's purpose to prevent discrimination against religions is constitutional since it lifts a regulation that burdens the free exercise of religion); *Texas Monthly*, 489 U.S. at 15 (stating that although some forms of accommodation are constitutionally permitted, a government directed subsidy given exclusively to a religious organization that is not required by the Free Exercise Clause and either burdens non-beneficiaries or cannot reasonably be seen as removing significant state-imposed detriment violates the Establishment Clause); *County of Allegheny*, 109 S. Ct. at 3104 (stating that the Establishment Clause prohibits government support and promotion of religious communication by religious organization and citing *Amos* as support that government efforts to accommodate religions have definite limits and are permissible when they remove burdens on the free exercise of religion).

[71] Young v. Crystal Evangelical Free Church, 141 F.3d 854, 862 (8th Cir.1998).

[72] *Id.* at 863.

[73] *Id.* (citing Lemon v. Kurtzman, 403 U.S. 602, 607 (1971)).

[74] A plain meaning for "secular" is "of or relating to worldly things as distinguished from things relating to church and religion; not sacred or religious." *Webster's New World Dictionary* 1288 (2d College ed. 1982).

[75] *Young*, 141 F.3d at 854.

[76] *Id.* at 862.

with the intent of promoting a *particular point of view in religious matters*."[77] Clinging to *Amos*' phrase regarding promoting "a particular point of view in religious matters," the Eighth Circuit defined "neutral" as any governmental action that does not promote a particular religious viewpoint.[78] Under the Eighth Circuit's interpretation, government cannot prefer one religion to another, but can prefer all religions to non-religions.[79] This permissive interpretation is found not solely in *Young*, but in many recent decisions in the Eighth Circuit in which the court uses *Amos* as support for religious accommodations.[80]

The Eighth Circuit bolstered this interpretation by again quoting *Amos*: "[I]t is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions."[81] Finding that Congress enacted RFRA not to benefit a particular religion, but to protect religion in general, the Eighth Circuit held that RFRA's purpose is neutral and, thus, a valid secular purpose.[82]

2. Through Clear Glass

The Eighth Circuit's approach to religious neutrality under the *Lemon* test is inaccurate. The Eighth Circuit's complete reliance on *Amos*' supposed permission to protect all religions as opposed to benefiting one

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[77] *Id.* (quoting Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 335 (1987) (emphasis added)).

[78] *Amos*, 483 U.S. at 334; *Young*, 141 F.3d at 862 (citing Gillette v. United States, 401 U.S. 437 (1971)).

[79] *Young*, 141 F.3d at 862.

[80] Stark v. Independent Sch. Dist., 123 F.3d 1068, 1074, 76-79 (8th Cir. 1997) (holding that a public elementary school that operated without televisions, radios, or computers in response to the requests of the religious sect did not violate the *Lemon* test because technically the school's accommodation was not direct government advancement and since *Amos* said the "government may (and sometimes must) accommodate religious practices," it may do so without violating the Establishment Clause; the dissent reminded the court of *Amos*' warning that "at some point accommodation may devolve into unlawful fostering of religion"); Clayton v. Place, 884 F.2d 376, 379 (8th Cir. 1989) (citing *Amos* as support in finding that a school's no-dancing rule did not advance religion and that the rule promotes less entanglement between religion and government). Indeed, the Eighth Circuit recognized a limit to accommodation in only one recent case when the limiting language supported accommodation. Carter v. Broadlawns Med. Ctr., 857 F.2d 448, 457 (8th Cir. 1988) (citing *Amos* while holding that a state mental hospital could hire a chaplain without violating the Establishment Clause because the hospital's restrictions on patients were a state-imposed burden on the patient's religious practices that merited accommodation).

[81] *Young*, 141 F.3d at 862 (quoting *Amos*, 483 U.S. at 335).

[82] *Id.*

sect over another[83] contradicts settled Establishment Clause jurisprudence holding that "government cannot aid one religion, aid all religions, or favor one religion over another."[84]

Indeed, even if *Amos* supported the Eighth Circuit's interpretation, promotion of a "particular religious viewpoint" includes promoting religion over non-religion, particularly when RFRA's sweeping coverage is considered. RFRA's broad nature effectively promotes religion over non-religion in situations greatly removed from the situations RFRA was introduced to protect.[85] For example, RFRA's application to the bankruptcy code in *Young* exemplifies RFRA's broad reach.[86] Likewise, landlords use RFRA as a basis to discriminate against unmarried couples,[87] and churches rely on RFRA in demanding accommodations from local zoning ordinances.[88] Furthermore, prisoners, who had been excluded from the "compelling interest test" that Congress stated RFRA was designed to reinstate,[89] have used RFRA's broader coverage to file numerous claims.[90]

The Eighth Circuit's misinterpretation of *Amos*' statement, that a secular purpose exists as long as a particular religious point of view is not promoted,[91] stems from the court's failure to recognize *Amos*' limited context of a narrow accommodation in a specific statute.[92] RFRA simply does not fit into *Amos*' narrow context since RFRA's comprehensive

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[83] *See supra* note 77 and accompanying text.

[84] Everson v. Board of Educ., 330 U.S. 1, 15 (1947) (stating that "[t]he 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.").

[85] *See* Christopher L. Eisgruber and Lawrence G. Sager, *Congressional Power and Religious Liberty After* City of Boerne v. Flores, 1997 SUP. CT. REV. 79, 102 (1997) (commenting that despite misleading statements from Congress regarding their intentions in enacting RFRA, "RFRA probably would have introduced a very different regime than the one it nominally 'restored'").

[86] *Young*, 141 F.3d at 863.

[87] *See, e.g.*, Smith v. Fair Employment and Hous. Comm'n, 913 P.2d 909 (Cal. 1996) (rejecting an accommodation by a 4-3 vote because no substantial burden existed).

[88] *See, e.g.*, Stuart Circle Parish v. Board of Zoning Appeals, 946 F. Supp. 1225 (E.D. Va. 1996) (granting a restraining order to allow a church-run feeding program in violation of city zoning ordinances).

[89] *See supra* notes 3 and 28 for Congress' intent in enacting RFRA; O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987) (excluding prisoners from the compelling interest test).

[90] *See, e.g.*, Hicks v. Garner, 69 F.3d 22 (5th Cir. 1995) (agreeing that a Texas prisoner had a valid claim under RFRA to wear long hair and beard in accordance with his Rastafari religion and remanding the case for consideration under RFRA).

[91] *Young*, 141 F.3d at 862 (quoting Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 335 (1987) (emphasis added)).

[92] *Amos*, 483 U.S. at 339.

accommodation applies to innumerable situations.[93] The Eighth Circuit failed to consider that RFRA's broad applicability to all religions is unusual because prior Establishment Clause cases primarily focused on governmental actions preferring particular religions[94] and the few cases that dealt with laws addressing religion in general were narrow in scope.[95] *Amos*' statement that a secular purpose exists, as long as a particular religious point of view is not promoted, was easily applied to the traditional Establishment Clause cases. These cases were concerned with promoting a particular religious viewpoint, but RFRA's sweeping nature removes it from traditional interpretations. Consequently, the Eighth Circuit's reliance on *Amos*' apparent permission to prefer religion generally was misplaced because of contextual differences.

By ignoring established law and misreading *Amos* to bless sweeping accommodations, the Eighth Circuit misconceived the established meaning of government neutrality and broadened *Lemon's* secular purpose test. A clear view of *Amos* shows that RFRA's broad scope impermissibly promotes religion by preferring religiously motivated conduct over conduct that is non-religiously motivated and causes RFRA to have a distinctly non-secular purpose. Thus, the Eighth Circuit incorrectly used *Amos* to find that RFRA meets the first prong of the *Lemon* test.

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[93] *See supra* note 63 and accompanying text. In the Eighth Circuit's discussion of the *Lemon* test's second prong, the Eighth Circuit points out the difference between *Amos*' stance on neutrality and other Supreme Court opinions. *Young*, 141 F.3d at 862. Quoting Justice Steven's statement in *City of Boerne v. Flores* that RFRA is unconstitutional because "governmental preference for religion, as opposed to irreligion, is forbidden by the First Amendment," the Eighth Circuit merely notes that Justice Stevens contradicts *Amos* but offers no further explanation. *Young*, 141 F.3d at 862-63 (quoting City of Boerne v. Flores, 117 S. Ct. 2157, 2172 (1997)).

[94] *See, e.g.*, Board of Educ. v. Grumet, 512 U.S. 687 (1994) (holding that a statute creating a special school district for the religious enclave of Satmar Hasidim, practitioners of a strict form of Judaism, violated the Establishment Clause even though the statute united civic and religious leaders because the statute crosses the line from permissible accommodation to impermissible establishment); Thornton v. Caldor, Inc., 472 U.S. 703 (1985) (holding that a Connecticut statute that gave Sabbath observers an unqualified right not to work on their Sabbath violated the Establishment Clause).

[95] *Texas Monthly, Inc. v. Bullock* dealt with a Texas statute that exempted religious periodicals from its sales tax on magazine subscriptions. 489 U.S. 1 (1989). The Court held that the statute violated the Establishment Clause because it was exclusively designed to advance a religious faith. *Id.* at 5-6.

B. The Lemon *Test's Second Prong–A Primary Effect Which Does Not Advance Nor Inhibit Religion*

1. Through *Amos*-Colored Glass

The Eighth Circuit found that RFRA's primary effect did not advance or inhibit religion and, therefore, passed the *Lemon* test's second prong.[96] Although recognizing that RFRA treats religion differently than non-religion, the court built on its understanding of governmental neutrality to state that giving special consideration to religious groups is not *per se* invalid.[97] Quoting *Amos*, the Eighth Circuit stated: "Whereas here, the government acts with the proper purpose of lifting a regulation that burdens the exercise of religion, we see no reason to require that the accommodation come packaged with benefits to secular entities."[98] Because the Eighth Circuit was entirely focused on a permissive understanding of neutrality, it did not concern itself with the exact nature of the burdens RFRA lifts. Rather, the court simply blessed RFRA's blanket approach of freeing all burdens that appear to be substantial under RFRA's compelling interest test.[99] Nor did the Eighth Circuit seek proof of the substantial burdens' existence or scope in an effort to determine RFRA's primary effect.

Instead, the Eighth Circuit clung to *Amos*' statement: "For a law to have forbidden 'effects' under *Lemon*, it must be fair to say that the government itself has *advanced* religion through its own activities and influence."[100] The Eighth Circuit determined that the government, through RFRA, does not advance religion, but merely "protects" it by removing burdens from religion, allowing religion to advance itself.[101] This distinction between "protection" and "advancement" is critical to the Eighth Circuit's narrow view of RFRA's primary effect, as the Eighth Circuit appears to indicate that any "protection" of First Amendment

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[96] *Young*, 141 F.3d at 862.

[97] *Id.* at 863; see *supra* notes 76-82 and accompanying text for a discussion of the Eighth Circuit's understanding of governmental neutrality.

[98] *Young*, 141 F.3d at 863 (quoting Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 338 (1987).

[99] *Id.* at 862.

[100] *Id.* (quoting *Amos*, 483 U.S. at 337 (emphasis added)).

[101] *Id.*

values would be constitutional.[102] Thus, the Eighth Circuit decided that RFRA's primary effect is to protect, rather than advance, First Amendment values, and that, consequently, RFRA passes the *Lemon* test's second prong.[103]

2. Through Clear Glass

Viewing Establishment Clause jurisprudence unobstructed by the Eighth Circuit's interpretation of *Amos*, RFRA undeniably violates the *Lemon* test's second prong. Although the Eighth Circuit correctly stated that *Amos* does not require accommodations to include benefits to secular entities,[104] the Eighth Circuit ignores *Amos*' emphasis on whether "Congress has chosen a rational classification to further a legitimate end" for statutes which appear neutral and seem to have a valid purpose.[105] Applying this analysis to RFRA creates troubling results.

Justice Kennedy's majority opinion in *Boerne* specifically focused on RFRA and the required legitimate end.[106] Referring to RFRA's relation to the separation of powers, the Court stated that while preventive rules are sometimes appropriate remedial measures, congruence must exist between the means used and the ends to be achieved.[107] RFRA as the means to achieve protection from substantial burdens on religious exercise does not have that congruity because RFRA's legislative history does not demonstrate any substantial burdens on religion, removal of which would be the desired legitimate end.[108] The total absence of any substantial burdens led the Supreme Court to conclude that "RFRA is so out of proportion to a supposed remedial or preventive objective that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior."[109] Thus, the Court found that the end Congress asserted did not accord with RFRA's sweeping coverage and was a violation of the separation of powers.[110]

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[102] *Id.* *Hodge v. Fitzgerald* states that "it is at least arguable that RFRA, like the Title VII exemption at issue in *Amos*, satisfies the second prong of *Lemon* since its purpose is to permits [sic] churches and religious adherents to advance their own religious activities and beliefs by preventing or minimizing interference with religious freedom." 220 B.R. 386, 400 (Bankr. D. Idaho 1998).

[103] *Young*, 141 F.3d at 862-63.

[104] *Id.* at 863 (quoting *Amos*, 483 U.S. at 338).

[105] *Amos*, 483 U.S. at 337.

[106] City of Boerne v. Flores, 117 S. Ct. 2157, 2168 (1997).

[107] *Id.*

[108] *Id.* at 2169.

[109] *Id.* at 2170.

[110] *Id.*

Although *Boerne's* legitimate end discussion tends to focus on RFRA as a violation of the separation of powers,[111] *Amos* indicates that the legitimate end determination is also critical for Establishment Clause analysis.[112] *Amos* warns of the government taking accommodation too far and unlawfully "fostering" religion in violation of the *Lemon* test's second prong.[113] Under *Amos'* view, then the legitimate end determination is a way of measuring whether government accommodations unlawfully advance religion.[114]

However, the Eighth Circuit fails to recognize and apply *Amos'* approach to the *Lemon* test's second prong.[115] The court disregards the *Boerne* Court's conclusion that RFRA is a broad, remedial law that does not address any discernable substantial burdens on religion, and thus, cannot be considered to be a rational classification with a legitimate end.[116] The Eighth Circuit does not even consider whether RFRA's stated purpose of changing the Supreme Court's precedent on the First Amendment ruling in *Employment Division v. Smith*[117] is a legitimate end.[118] Instead, the Eighth Circuit disregarded *Amos'* warning that governmental accommodations that disregard the need for neutrality and actively sponsor or interfere with religion can become unlawful fostering of religion[119] by clinging to its literal distinction between protection of religion and religious advancement.[120]

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[111] *See, e.g.*, Ira C. Lupu, *Why the Congress Was Wrong and the Court was Right–Reflections on* City of Boerne v. Flores, 39 WM. & MARY L. REV. 793 (1998) (stressing the unconstitutional nature of RFRA by discussing how RFRA violates the separation of powers).

[112] Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 337 (1987). In discussing the *Lemon* test's second prong, the Court explains that the strict scrutiny test is not required for statutes that are facially neutral and designed to limit government interference with the exercise of religion. *Id.* Instead, the proper test is whether Congress has chosen a rational classification to further a legitimate end. *Id.*

[113] *Id.* at 334.

[114] *Id.* at 334-37.

[115] *Young*, 141 F.3d 854. 862-63 (8th Cir. 1998).

[116] *Id.*

[117] 494 U.S. 872 (1990). *Smith* addressed the issue of whether members of the Native American Church fired from their jobs for taking peyote as a religious exercise could receive unemployment benefits. *Id.* The Court held that the "compelling interest test," which had traditionally been applied to such situations, did not have to be applied to generally applicable laws, such as the unemployment benefits law at issue in the case. *Id.* at 886. Thus, the fired employees were ineligible to receive unemployment benefits because they were fired for work-related misconduct, and the misconduct's religious nature was not protected. *Id.* at 890.

[118] *See supra* note 105 and accompanying text.

[119] *Amos*, 483 U.S. at 334.

[120] *See supra* notes 100-03 and accompanying text.

While the Eighth Circuit's argument that statutes that protect religion do not automatically advance religion is accurate, the Eighth Circuit is incorrect in extending its argument to state that any statute protecting religion does not advance religion. The distinction is critical, and the Eighth Circuit incorrectly evaluated RFRA by ignoring the *Amos* Court's warning of accommodations that devolve into the unlawful fostering of religion.[121] Thus, the Eighth Circuit failed to see that RFRA's sweeping protections become the unlawful fostering of religion in *Amos*' prophetic warning. This determined focus on RFRA's design rather than its reality led the Eighth Circuit to the incorrect conclusion that RFRA's primary effect does not advance religion and, thus, passes the *Lemon* test's second prong.

C. *The* Lemon *Test's Third Prong–No Excessive Entanglement Between Government and Religion*

1. Through *Amos*-Colored Glass

The Eighth Circuit determined that RFRA does not cause excessive government entanglement with religion and, thus, satisfies the *Lemon* test's third prong.[122] The Eighth Circuit relied on *Amos*' reasoning that a religious exemption statute which results in a more complete separation between religion and government lessens intrusive inquiries into religion and, thus, avoids excessive entanglement.[123]

Citing *Amos*, the Eighth Circuit stated that RFRA is designed to prevent entanglement by effecting a more complete separation between religion and government.[124] For the court, RFRA properly prevented the intrusive inquiry into whether tithes were a religious exercise.[125] Finding that RFRA was designed to decrease involvement between religion and government by limiting the impact of neutral laws on religion, the Eighth Circuit quickly concluded that it did not excessively entangle government and religion and met the *Lemon* test's third prong.[126]

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[121] *See supra* notes 112-13 and accompanying text.

[122] *Young*, 141 F.3d at 863 (citing Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971)).

[123] *Id.* (citing *Amos*, 483 U.S. at 339).

[124] *Id.*

[125] *Id.*; Young v. Crystal Evangelical Free Church, 152 B.R. 939, 955 (Bankr. D. Minn. 1993).

[126] *Young*, 141 F.3d at 863. This reasoning was echoed in *Hodge v. Fitzgerald's* brief analysis of RFRA and the *Lemon* test's third prong. 220 B.R. 386, 400 (Bankr. D. Idaho 1998). Relying on the

2. Through Clear Glass

While the Eighth Circuit's argument that accommodations limit entanglement was correct on a rudimentary level, the Eighth Circuit's argument fails upon closer examination. The Eighth Circuit blindly seized upon *Amos*' statement that a religious exemption statute avoids excessive entanglement by decreasing inquiries into religion. The court then applied *Amos*' approach to entanglement without comparing RFRA to the employment discrimination provision in Title VII of the Civil Rights Act of 1964 at issue in *Amos*. While the statement of the *Amos* court that the Title VII provision limits intrusive inquiries into religion and, thus, lessens entanglement is correct,[127] the statutory provision giving rise to that statement must be considered.

Even a brief examination of the two statutes demonstrates why the Eighth Circuit was impulsive in appropriating *Amos*' reasoning to RFRA. *Amos* evaluated a specific, narrow religious accommodation dealing with employment discrimination in a specific provision of Title VII of the Civil Rights Act of 1964.[128] RFRA, however, assesses a broad statute whose sweeping provisions apply to innumerable situations and is not a specific accommodation to a single activity.[129] Thus, the differences between the two statutes make the Eighth Circuit's reliance on *Amos* as an illustration for entanglement misplaced.

Furthermore, the Eighth Circuit's presumption that RFRA does not cause excessive entanglement is incorrect. Although RFRA increases possible accommodations, it does not reduce government entanglement with religion.[130] Indeed, RFRA's sweeping scope and reinstatement of the "substantial burden/least restrictive means" test set aside in *Smith* heightens government entanglement with religion. A comparison of the RFRA and *Smith* tests demonstrates that the initial analysis of a requested accommodation is the same because the preliminary inquiry determines

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same sentence in *Amos* as the *Young* court, the *Hodge* court simply stated that RFRA did not violate the third prong since religious exemption statutes tend to decrease governmental involvement. *Id.*

[127] *See supra* note 122 and accompanying text.

[128] *Amos*, 483 U.S. at 329.

[129] 42 U.S.C. § 2000bb(b)(1), (2) (1998); *see supra* notes 85-90 and accompanying text.

[130] 42 U.S.C. § 2000bb(b)(1), (2) (1998). RFRA was designed as a response to *Employment Div. v. Smith*, 494 U.S. 872 (1990). Under *Smith*, a generally applicable law did not have to pass the "compelling interest test" that RFRA reinstated. *Id.* If prohibiting the exercise of religion is merely the incidental effect of a generally applicable and otherwise valid statute, then the First Amendment has not been violated. *Id.*

whether the activity at issue is a religious activity.[131] The remaining analysis, however, requires more investigation into religious activity under RFRA than under *Smith*. Under RFRA, the court must determine whether the burden on the religious activity is substantial and, if so, whether the government has a compelling interest that necessitates the substantial burden.[132] This can only be accomplished by a comprehensive evaluation of every law with the interests and beliefs of every religion in mind.[133] Thus, while RFRA broadens the category of possible religious accommodations with its lower threshold level for religious exercises that merit accommodation, RFRA requires greater scrutiny into the activity, the burden on the activity, and the governmental reasons for the burden. Consequently, the extensive evaluation required by RFRA is greater than the government involvement with religion contemplated in *Smith*.

The Eighth Circuit's argument that RFRA decreases entanglement was based on the belief that greater accommodations decrease governmental intrusion into religion. Theoretically, after a court evaluates the religious exercise and grants an accommodation, the government will no longer be "entangled" in the religious exercise because the accommodation separates the religious activity from the government. However, the Eighth Circuit simply lowered the threshold *Smith* established for determining which religious exercises deserve accommodation. Under this reasoning, the *Smith* court could have accurately stated that its test reduced excessive entanglement with its higher, but easily defined, threshold for accommodation and its removal of much of the initial evaluation of the burdened activity. Thus, the excessive entanglement argument advanced by the Eighth Circuit merely promotes a different standard for determining accommodations.

In fact, by empowering the government to grant greater religious accommodations in such a sweeping scope, RFRA unleashes a form of entanglement heretofore never seen. While RFRA is a facially positive act towards religion, it sets a dangerous precedent of governmental interference in religion. *Smith* can be interpreted as obedient to the

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[131] Under both RFRA and *Smith*, the court must determine whether the activity is "religious." Courts make this determination by evaluating whether the activity involves a sincerely held belief. Gillette v. United States, 401 U.S. 437 (1971); Welsh v. United States, 398 U.S. 333 (1970); United States v. Seeger, 380 U.S. 163 (1965); Torasco v. Watkins, 367 U.S. 488 (1961).

[132] 42 U.S.C. § 2000bb(b)(1), (2) (1998).

[133] Marci A. Hamilton, *The Religious Freedom Restoration Act is Unconstitutional, Period*, 1 U. PA. J. CONST. L. 1, 14 (1998). RFRA institutes a standard of judicial review in every case which implicates religious conduct. *Id.* In turn, this standard of review creates incentives for government to monitor, watch and keep track of the theological tenets of every religion in society. *Id.* If government is to avoid the costly litigation attendant upon a multiplicity of RFRA claims, it must scrutinize every law that it passes with the interests of every religion in mind. *Id.*

Constitution's command that government cannot be excessively entangled with religion.[134] *Smith* decreases entanglement by raising the threshold level for accommodations and avoids court-officiated determinations regarding a religious activity.[135] Although RFRA is more facially beneficial to religion than *Smith*, RFRA's sweeping scope and resultant governmental scrutiny of religious activities violates the command against excessive entanglement.

With RFRA, the religious community sought to use the political process to protect itself and the Eighth Circuit blindly responded to this call. The Eighth Circuit's desire to protect religious exercise[136] led it to erroneously conclude that RFRA does not cause excessive entanglement between religion and government.[137]

IV. CONCLUSION

The Eighth Circuit's holding that RFRA is constitutional as applied to the federal government under the Establishment Clause is an unfortunate example of ideological desires overcoming sound reasoning. The court inappropriately interpreted *Amos* to approve RFRA's broad religious accommodations. Unfortunately, *Amos* does not support that proposition. The Eighth Circuit neglected to consider the deeper Establishment Clause issues at stake and the impact of its misapplied logic. The court's effort to promote religious exercise and protect the religious community, though well-intentioned, neglected to consider the long-term effects of its holding.

In finding RFRA constitutional, the Eighth Circuit also lent credibility to the numerous state religious freedom acts making their way through the legislative process.[138] These state acts are generally quite

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[134] U.S. CONST. amend. I.

[135] 494 U.S. at 872.

[136] *See supra* note 63 and accompanying text.

[137] *Young*, 141 F.3d at 863.

[138] State religious freedom acts currently under consideration include: Alabama Religious Freedom Amendment, S. 604 (Ala. 1998) (filed with Secretary of State Apr. 27, 1998); S. 678, 89th Leg. (Mich. 1997) (in the Senate Committee on Judiciary); New Jersey Religious Freedom Act, S. CON. RES. 56, 208th Leg. (N.J. 1998) (in the Senate Committee on Judiciary); South Carolina Religious Freedom Restoration Act, H. 5045, 112th Sess. (S.C. 1997) (to Senate Committee on Judiciary May 14, 1998). Additionally, Florida recently enacted its own religious freedom act. FLA. STAT. ANN. § 761.01 (West 1998). On the federal level, the Religious Liberty Protection Act of 1998, which mirrors RFRA in its promotion of religious accommodation but, unlike RFRA, clings to the Commerce Clause in an effort not to violate the separation of powers, is in process. Religious Liberty Protection Act of 1998, H.R. 4019, 105th Cong. (1988) (in committee since Aug. 6, 1998); Religious Liberty Protection Act of 1998, S. 2148, 105th Cong. (1988) (referred to Senate Committee on June 9, 1998).

similar to RFRA in terms of scope and language, and therefore, will likely face the same Establishment Clause issues as RFRA. *Young's* ruling not only resurrects RFRA as applied to the federal government but also provides a constitutional endorsement to those proposed state laws. The Eighth Circuit's flawed Establishment Clause jurisprudence might have a persuasive impact on other courts seeking to approve religious exercise acts whose sweeping nature violates the Establishment Clause. However, the new life the Eighth Circuit has granted RFRA will most likely be troubled, if not short-lived, as the Eighth Circuit's short-sighted ruling pushes religion and government closer together into new issues of debate.