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SYMPOSIUM ON BANKRUPTCY REFORM

INTRODUCTION

*Dan Schechter**

As this issue of the *Loyola of Los Angeles Law Review* goes to press, Congress is again in the throes of amending the Bankruptcy Code. The lobbyists for every conceivable interest group—except, perhaps, debtors—have descended upon Washington, wallets bulging with carefully-reasoned arguments both for and against various legislative proposals.

This Symposium attempts to provide some relatively neutral guidance to the legislators. First, Steven Walt examines a recently-enacted amendment to the Code that was designed to insulate some charitable contributions from attack as fraudulent transfers. He critically discusses the drafting of the new law to see whether it is likely to achieve the goals Congress articulated; he concludes that the law is flawed and may give rise to unintended consequences.¹

Turning to the currently-pending Bankruptcy Reform Act, Pamela Kohlman Webster vigorously attacks the bill's treatment of health-care bankruptcy, arguing that the legislation is poorly drafted and will skew the balance of priorities in bankruptcy. Further, the alleged "reforms" will be very costly to administer, while providing inadequate funding to cover those costs.²

Mechele Dickerson is very critical of the bill's controversial requirement that debtors attend "credit education" classes in connection with their bankruptcy filings. She demonstrates that the credit

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1. See Steven Walt, *Generosity in Bankruptcy: The New Place of Charitable Contributions in Fraudulent Conveyance Law*, 32 LOY. L.A. L. REV. 1029 (1999).

2. See Pamela Kohlman Webster, *The Malpractice of Health Care Bankruptcy Reform*, 32 LOY. L.A. L. REV. 1045 (1999).

schools would be useless and costly and would, at best, provide superficial and untimely help to those debtors who do not know how to manage their finances.³

Maureen Tighe and Emily Rosenblum examine the problem of "identity theft," the fraudulent and unauthorized filing of bankruptcy petitions in the name of innocent third parties. In their article, they discuss the current legislation on point, describe its shortcomings, and propose additional legislative solutions.⁴

Eric Posner offers qualified support for one aspect of the currently pending bill, which would force upper-income debtors into Chapter 13 and away from Chapter 7. Chapter 7 provides for liquidation of the debtor's non-exempt assets, while Chapter 13 provides for a partial payout of the debtor's obligations over time. In his article, he demonstrates that it would be economically efficient to compel some upper-income debtors to file Chapter 13 plans, thereby reducing the cost of credit overall.⁵

By contrast, my Article argues that the "gatekeeper" aspect of the pending bill sets the bar too low, sweeping too many middle-income debtors into Chapter 13 plans destined for failure. I propose a higher standard. In addition, my Article offers other amendments to the bill.⁶

The Symposium ends with the Final Report of the Bankruptcy Foreclosure Scam Task Force, a project of the Bankruptcy Court for the Central District of California chaired by Judge Lisa Hill Fenning.⁷ The Task Force conducted a statistical analysis of pending bankruptcies and determined that many millions of dollars' worth of real property are affected by "foreclosure fraud," in which debtors file serial bad-faith bankruptcies to thwart foreclosure. The Task

3. See A. Mechele Dickerson, *Can Shame, Guilt, or Stigma Be Taught? Why Credit-Focused Debtor Education May Not Work*, 32 LOY. L.A. L. REV. 945 (1999).

4. See Maureen A. Tighe & Emily Rosenblum, "What Do You Mean, I Filed Bankruptcy?"—Or How the Law Allows a Perfect Stranger to Purchase an Automatic Stay in Your Name, 32 LOY. L.A. L. REV. 1009 (1999).

5. See Eric A. Posner, *Should Debtors Be Forced into Chapter 13?*, 32 LOY. L.A. L. REV. 965 (1999).

6. See Dan Schechter, *Comments on the Pending Bankruptcy Reform*, 32 LOY. L.A. L. REV. 977 (1999).

7. See *Final Report of the Bankruptcy Foreclosure Scam Task Force*, 32 LOY. L.A. L. REV. 1063 (1999).

Force drafted legislation to combat the problem by empowering the bankruptcy courts to issue “in rem” relief binding upon debtors and their transferees. I am pleased to report that the current bill contains provisions remarkably similar to the Task Force’s language. Perhaps the publication of the Task Force Report in this Symposium will help to encourage Congress to enact that portion of the bill, even if other parts of the legislation do not survive.

