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SUPREME COURT TO RULE ON BANKRUPTCY REFORM LAW

Supreme Court to rule on bankruptcy reform law

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Tags: [bankruptcy reform](#), [debt relief agency](#)



Less than four years after the new bankruptcy reform law went into effect, the U.S. Supreme Court has granted certiorari to determine the constitutionality of some of the Act's most controversial provisions.

In October 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act became law. Almost immediately, bankruptcy attorneys [filed legal challenges](#).

This fall, the justices will hear oral argument on [two key provisions of the Act](#):

- **Who qualifies as a "debt relief agency"?**

Under §526 of the statute, a debt relief agency is defined as "any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer."

Attorneys argue that they should not be considered debt relief agencies, but if they are, then the requirements under the statute violate their First Amendment rights.

- **What are the required disclosures?**

Under §528 of the Act, debt relief agencies must disclose the following in all of their advertising materials: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code," or a similar statement.

Again, attorneys argue that these requirements violate their First Amendment rights and amount to mandatory deceptive disclosures that confuse the public.

[The Court will consider](#) an 8th Circuit ruling that said a law firm representing debtors met the definition of debt relief agency, but that this provision of the law is unconstitutional. However the court said that law firms are still required to give the disclosures.

Alan Milavetz, a partner at the Minnesota firm of Milavetz, Gallop & Milavetz that was the plaintiff in the 8th Circuit case, said he plans to argue the case before the Court.

"This case is really about what is so important about being a lawyer: that we are able to give our clients options and let them make their decisions within the boundaries of the law," he said.

A decision from the Supreme Court can't come soon enough for bankruptcy attorneys, who have experienced an [increase in workload](#) since the Act went into effect.

The questions involved in the case are "all the more important in these troubling economic times because our clients need lawful, accurate advice on financial matters in pre-bankruptcy litigation," said Chad Schulze, a lawyer at the Milavetz firm who worked on the cert petition.

And the issues in the case go beyond bankruptcy practice, said Howard Marc Spector, a sole practitioner in Dallas who represented the plaintiff in similar case in the 5th Circuit.

"It seems to me that all lawyers have to be very concerned about laws that prohibit them from giving legal advice to their clients," he said.

Courts are split

Across the country, federal courts have reached different conclusions about the constitutionality of the Act.

- [Debt relief agencies](#)

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