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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ERIC W. OLSEN,  
KEVIN D. SWARTZ  
JASON C. MCBRIDE

Case No. 05-6365-110

Plaintiffs,

v.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

ALBERTO GONZALES, in his official  
capacity as Attorney General of the  
United States of America, and

ILENE LASHINSKY, in her official  
capacity as United States Trustee

Defendant.

Plaintiffs, by and through their attorneys, Keith D. Karnes and Douglas R. Ricks, allege  
the following:

FACTUAL BACKGROUND

1. In 2005 the Unites States Congress enacted the Bankruptcy Abuse Prevention and  
Consumer Protection Act ("The Act"). The Act, among other provisions, require attorneys to

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make certain disclosures to certain categories of clients and prohibits attorneys from advising their clients to lawfully incur debt in violation of the First and Fifth Amendments of the United States Constitution.

2. This is a complaint for declaratory and injunctive relief challenging 11 U.S.C. §§ 526-528. These provisions are unconstitutionally vague and infringe on an attorney's first amendment rights to free speech. Each of these Bankruptcy Code ("the code") sections provide sanctions and the possibility of injunctive relief against any attorney who does not comply with the code sections.

3. Section 526 of the Bankruptcy Code forbids an attorney from advising certain clients, depending on the client's assets, from lawfully incurring debt (11 U.S.C. § 526(a)(4)) in violation of the First Amendment.

4. Section 527 of the Bankruptcy Code violates the First Amendment by compelling attorneys (including those who do not represent debtors in bankruptcy) to provide information about how to file bankruptcy. Section 527 further violates the First Amendment because it compels attorneys to advise their clients that they can hire a bankruptcy petition preparer.

5. Section 528 of the Bankruptcy Code violates the First Amendment by compelling attorneys (including those that do not represent debtors in bankruptcy) to advertise themselves as "debt relief agencies" and by advertising to the public "that the assistance may involve bankruptcy relief under the Bankruptcy Code" or a substantially similar statement.

6. Sections 526-527 are reliant upon the definitions found in § 101 of the Bankruptcy Code. The disclosures and prohibitions relate only to "assisted persons(s)." That is those who

have less than \$150,000 in “nonexempt property.” “Nonexempt property” is not defined by the code.

7. Further, the fact that these disclosures are only given to assisted persons causes a Fifth Amendment Due Process problem for attorneys who need to know to whom the disclosures and prohibitions apply.

#### JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because plaintiffs’ claims arise under the Constitution and laws of the United States.

9. Venue is proper because defendants are officers of the United States and the plaintiffs reside in Marion County, Oregon.

#### PARTIES

10. Eric W. Olsen is an attorney admitted to practice before the state and federal courts of Oregon and Washington. Mr. Olsen has been practicing bankruptcy law since 1978. He is the founder of what is now Olsen, Olsen & Daines, a firm which files over 150 bankruptcies a month for consumer debtors.

11. Kevin D. Swartz is an attorney admitted to practice before the state and federal courts of Oregon and Washington. Mr. Swartz has been practicing bankruptcy law since 1998. Mr. Swartz practices exclusively bankruptcy law for debtors throughout Oregon and Washington.

12. Jason C. McBride is an attorney admitted to practice before the state and federal courts of Oregon. Mr. McBride has been practicing law since 2003. Mr. McBride does not represent clients in bankruptcy matters nor does he file petitions for relief under the Bankruptcy Code.

13. Alberto Gonzales is the Attorney General of the United States of America and heads the Department of Justice which is charged with enforcing the Bankruptcy Code through the Office of the United States Trustee.

14. Ilene Lashinsky is the United States Trustee for Oregon and Washington, among other areas.

#### FACTUAL ALLEGATIONS

15. The bankruptcy code defines an “assisted person” as “any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$150,000.”

16. The code defines a “debt relief agency” as “any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration...”

17. The code defines “bankruptcy assistance” as “any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.”

18. Each of the plaintiffs is a debt relief agency as defined by the code because each of the plaintiffs advise debtors with less than \$150,000.00 in nonexempt assets to file bankruptcy and also advise such debtors the effects of bankruptcy on spousal or child support.

19. The code prohibits plaintiffs from advising an assisted person to incur new debt in contemplation of filing bankruptcy, but does not prohibit advising a debtor who is not an assisted person to incur new debt. 11 U.S.C. § 526(a)(4).

20. The code requires plaintiffs to perform work for their clients when plaintiffs have a conflict of interest or when the plaintiffs do not believe that the work that would be performed would be beneficial or in good faith. 11 U.S.C. § 526(a)(1).

21. The code requires plaintiffs to make misleading, untrue, or negligent disclosures to clients, including giving clients the “bankruptcy information sheet” which is factually inaccurate, or advising clients that they have the right to represent themselves or to hire a bankruptcy petition preparer or that the client may file under a chapter for which the client is not eligible. 11 U.S.C. § 527.

22. The code requires plaintiffs to advertise to the public as a “debt relief agency” and state “[w]e help people file for bankruptcy relief under the Bankruptcy Code” whether or not plaintiffs actually help people file for bankruptcy relief. 11 U.S.C. § 528.

#### CLAIM ONE

23. The code’s prohibition on plaintiffs advising their clients to incur debt if the client is an “assisted person” is a violation of the First Amendment of the United States Constitution.

#### CLAIM TWO

24. The code’s requirement that plaintiffs perform any service that plaintiff informed an assisted person that plaintiffs would provide unconstitutionally chills speech by subjecting plaintiffs to sanctions including disgorgement should plaintiffs refuse to provide promised services that later become ill-advised, negligent or unethical.

#### CLAIM THREE

25. Pursuant to § 527 of the code plaintiffs must make untrue, misleading, and ill advised statements to clients in violation of the First Amendment of the United States Constitution.

CLAIM FOUR

26. Pursuant to § 528 of the code plaintiffs must make statements in their advertising which are untrue, misleading and are ill advised for their clients to perform in violation of the First Amendment of the United States Constitution.

CLAIM FIVE

27. Pursuant to §§ 526-528 disclosures have to be made and speech is prohibited based on a client's nonexempt assets.

28. The code does not define "nonexempt asset" nor does it tell plaintiffs how to value the assets or apply any or what exemptions.

29. Plaintiffs cannot know what a "nonexempt asset" is or how to apply an exemption (particularly to encumbered property), yet are subject to sanction for failing to make disclosures or for advising a client based on their "nonexempt assets."

30. Sections 526-528 are therefore unconstitutionally vague in violation of the Fifth Amendment of the United States Constitution.

WHEREFORE, plaintiffs respectfully request that this Court enjoin defendants from enforcing 11 U.S.C. §§ 526-528; enter a declaratory judgment that 11 U.S.C. §§ 526-528 are unconstitutional as applied to plaintiffs; require defendants to pay plaintiffs' attorney's fees; and such other relief as the Court deem proper.

DATED 12, 1, 05

Olsen, Olsen & Daines



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