Appendix

Harvard Law Prof. Vern Countryman Endorses Federal Garnishment Law as Part of Consumer Credit Act

EXTENSION OF REMARKS

OF

HON. LEONOR K. SULLIVAN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 17, 1967

Mrs. SULLIVAN. Mr. Speaker, among our witnesses in the Subcommittee on Consumer Affairs of the Committee on Banking and Currency this morning on H.R. 11601, the Consumer Credit Protection Act, which also includes truth-in-lending provisions, was an outstanding scholar in the field of bankruptcy law, Prof. Vern Countryman, of the Harvard University Law School.

Professor Countryman testified on only one title of H.R. 11601, title II, which would ban wage garnishment as a device for enabling unscrupulous credit merchants to overload low-income wage earners with more credit than they can possible handle without losing part or all of their wages—and eventually their jobs—because of employer annoyance and expense in connection with the garnishment process.

Confining his testimony to this one title of the bill, Professor Countryman provided us with valuable insight into the relationship of harsh State garnishment laws and the prevalence of personal bankruptcies in those States. He called for severe limitations on the use of this device to deprive a worker's family of the money needed for day-to-day living.

For those who wonder whether an antigarnishment provision belongs in a consumer credit bill dealing primarily with disclosure of finance charges in connection with extensions of credit—truth in lending—I am taking this opportunity to call attention to the reasoned and documented statement made to our subcommittee by an outstanding member of the legal profession, as follows:

STATEMENT OF VERN COUNTRYMAN, PROFESSOR OF LAW AT HARVARD LAW SCHOOL, BEFORE THE SUBCOMMITTEE ON CONSUMER AFFAIRS, OF THE HOUSE COMMITTEE ON BANKING AND CURRENCY, ON H.R. 11601, THE CONSUMER CREDIT PROTECTION ACT, AUGUST 16, 1967

My name is Vern Countryman. I am Professor of Law at Harvard Law School. I have been teaching the law of creditors' rights and bankruptcy since 1946, save for a four-year period, 1955–1959, when I practiced law in Washington, D.C.

I do not appear here to testify on all aspects of H.R. 11601. I am not an expert on consumer credit—a subject I have just begun to study. I have gotten only far enough in my efforts to know that reliable information on the subject is scarce and that there is a real need for the sort of investigation which Title III of H.R. 11601 would authorize.

I appear to testify in general support of Title II of H.R. 11601, which would prohibit the garnishment of wages, although I have several suggestions to make for changes in the proposal.

The problem with which Title II would deal is a nationwide one because nearly all states permit wage garnishment. Some limit the remedy to creditors who have first reduced their claims to judgment, but most permit the creditor to garnishee the employer when suit is initiated. In some states a separate levy is required each payday; in others, the initial levy is a continuing one until the creditor's judgment is paid.

All states exempt some portion of the debtor's wages from garnishment, but the exemptions vary drastically. In some states they are expressed in dollar amounts and they range from $350 for married debtors and $200 for single debtors in Alaska to $50 for all debtors in Rhode Island. In other states they are expressed in percentages and range from 50% in Arizona to 100% in Florida, Pennsylvania and Texas. Most exemption to the many debtors whose employers can be served with garnishment process outside the state of the debtor's residence.

The best and most recent survey of this bewildering pattern of state wage garnishment laws is an article by Mr. George Brunn, published in volume 53 of the California Law Review in 1965. I have a copy of that article with me and would be happy to submit it to the Committee if you would care to have it.

The consequences of wage garnishment are principally three:

(1) If garnishment of the employer is effected outside the state of the debtor's residence, he may find his wages shut off entirely. If it is effected in the state of his residence, he may find himself left to support his family on $50 a month in Rhode Island, $67.50 a month in Kentucky, $20 a week in New Hampshire, or half of his $75 a week wage in Arizona, or 50% of his wage or $25, whichever is less, in Vermont.

(2) Without regard to the amount of the exemption, the debtor may find himself unemployed. Many employers do not take kindly to the extra bookkeeping required by garnishment levies, particularly if they are repeated. Labor unions have been largely ineffective in protecting their members against such employer retaliation although some collective bargaining contracts give the employee one or two free garnishments before discharge.

(3) To save his job and support his family, the debtor may be driven to resort to bankruptcy in many cases where he would not otherwise do so in order to dissolve the garnishment levy or prevent threatened levies. As the number of non-business bankruptcies has increased more than twenty-fold, from 8,500 to almost 176,000, between 1946 and 1966, this is a matter of some consequence to the federal bankruptcy courts.

Precise information on the relationship of wage garnishment to bankruptcy is, of course, not available. But there is enough evidence to support a recent statement of the Bureau of Labor Standards that "There seems to be a direct connection between the number of garnishments and the number of personal bankruptcies." *Debt Pooling and Garnishment in Relation to Consumer Indebtedness*, Fact Sheet No. 4–F (1966).

Mr. Brunn, in his California Law Review article, made a study of the 10 states with the highest and the 10 states with the lowest per capita personal bankruptcy rates in 1962. The results are so interesting that I reproduce them here.

Personal bankruptcies

[Per 100,000 population]

Alabama	279
Oregon	200
Tennessee	184
Maine	153
Georgia	149
Arizona	147
California	145
Illinois	134
Ohio	132
Colorado	131
North Carolina	1
Texas	2
South Carolina	3
Pennsylvania	4
Maryland	5
Florida	7
Delaware	10
South Dakota	11
New Jersey	11
Alaska	13

Of the states with the lowest personal bankruptcy filings, Florida, Pennsylvania and Texas had a 100% wage exemption, North Carolina, South Carolina and South Dakota authorized exemptions up to 100% if needed to support the debtor's family, New Jersey had a 90% exemption, and Alaska exempted $350 for married and $200 for single debtors. Maryland exempted only 75% in some counties and $100 in others, but wage garnishments were little used there because of the necessity of a separate levy every payday.

Of the states with the highest personal bankruptcy filings:

Alabama had a 75% exemption.

Oregon exempted $175.

Tennessee exempted $17 per week for the head of a family plus $2.50 per week for each dependent under 16, and $12 per week for debtors who were not heads of families.

Maine allowed garnishment of not to exceed $30 per month but provided that at least $10 should be exempt.

Georgia exempted $3 per day plus 50% of the excess.

Arizona had a 50% exemption.

California exempted 50% but authorized more, up to 100%, if needed to support the debtor's family and if the creditor's claim was not for necessaries.

Ohio exempted 80% of the first $300 per month and 60% of the balance (with a minimum of $150), and $100 for debtors who were not heads of families.

Colorado exempted 70% for heads of families and 35% for others.

Illinois had the highest exemption in this group—85% or $45 per week, whichever was more, with a maximum of $200 per week. But the Illinois experience is instructive further. Until a 1961 amendment to its law, its exemption was only $45 per week. Between 1961 and 1964 Mr. Brunn found that personal bankruptcies in Illinois *declined* 9% while they were increasing 18% nationally. [And I find that they have *declined* another 4% in Illinois from 1964 to 1966 while they have increased another 2% nationally.]

Mr. Brunn also studied the experience of Iowa, which moved in the opposite direction in 1957 by abolishing its 100% wage exemption and substituting $35 per week plus $3 per dependent. Since 1957 personal

bankruptcies have multiplied 3.6 times in Iowa while multiplying 2.8 times nationally.

It may be said that these figures alone do not prove that wage garnishment is a contributing cause of bankruptcy. It may merely be a series of remarkable coincidences. Or it may be that the financial difficulties which led to garnishment would have led to bankruptcy had there been no garnishment.

But we need not only rely on the figures alone. Last week you heard the testimony of three able and experienced Referees in Bankruptcy from states where wage garnishment is heavily employed (Oregon, Tennessee and California). They were unanimously of the view that wage garnishments caused bankruptcy filings by many debtors who would not otherwise have filed.

That view is supported also by studies of personal bankruptcies in which the bankrupts were interviewed. In one such study, involving 84 bankrupts in Michigan, 75% indicated that garnishment or the threat of garnishment was the reason for their filing in bankruptcy. Dolphin, *An Analysis of Economic and Personal Factors Leading to Consumer Bankruptcy* (1965), p. 18. In another study in Illinois in which 73 bankrupts were interviewed, 35 said that threat of garnishment or fear of job loss was what caused them to go into bankruptcy. Stabler, *The Experience of Bankruptcy* (1966), p. 7. Other similar studies which did not include personal interviews with the bankrupts reveal:

Out of 300 cases in Seattle, 69 debtors had suffered one garnishment in the four months preceding bankruptcy, 14 more had experienced two garnishments in that period, and 4 had been garnished 3 or more times. Brosky, *A Study of Personal Bankruptcy in the Seattle Metropolitan Area* (1965), p. 39.

Interviews with bankruptcy attorneys in Utah revealed their opinion that most personal bankrupts have either had their wages garnished or have been threatened with garnishment. Misbach, *Personal Bankruptcy in the United States and Utah* (1964), 33.

To this I would like to add my own opinion, based on discussions with many Referees in Bankruptcy and bankruptcy attorneys, and on the examination of the files in hundreds of bankruptcy cases, that wage garnishment, either actual or threatened, is a precipitating cause in a very substantial number of the personal bankruptcy cases.

I have previously estimated, based on my studies of the official bankruptcy statistics published by the Administrative Office of the United States Courts, that over a billion dollars in creditors claims per year is being discharged in bankruptcy cases and more than 90% of these cases are personal bankruptcies. Countryman, *The Bankruptcy Boom*, 77 Harv. L. Rev. 1452 (1964). A more recent analysis of the statistics has persuaded me that my prior estimate was far too low and that the amount of creditors claims discharged is now approaching two billion dollars per year.

This figure may not reflect serious damage to the bankers, loan companies and finance companies whose losses probably do not exceed one-half of one percent of loans outstanding, nor to the installment seller operating on a 100 percent markup who breaks even whenever he loses only one-half of his claim. After all, they can shift half of their relatively small loss to the federal fisc when they make out their tax returns. But there are other small volume, low margin creditors for whom the bankruptcy of a debtor is a painful blow.

Moreover, bankruptcy is a catastrophe for the debtor. As one observer has said, "Although uninformed people may minimize the gravity of the consumer bankruptcy problem by saying that only one-tenth of one per cent of the population goes bankrupt, there is a qualitative dimension in human distress that is understated by such statistics." Myers, *Non-Business Bankruptcies*, in Proceedings of Tenth Annual Conference, Council on Consumer Information, page 9. I would agree, and would add that the studies referred to above, and others, indicate that the typical bankrupt has three or four dependents, so that the human distress is felt not merely by the 176,000 personal bankrupts, but by families whose members number from 700,000 to 800,000.

My conclusions about the relationship of wage garnishments to bankruptcy lead me to my first suggested change in H.R. 11601. I would suggest that the finding in Section 201 of the bill be not confined to the effect of wage garnishment on interstate commerce, but that it take account also of the effect of wage garnishment on the federal bankruptcy system. It is ludicrous, unseemly and uneconomic to have most of the states providing creditors with a remedy for collection and the federal bankruptcy system providing debtors with a countervailing remedy to undo what state law has allowed the creditor to do. It is well within the power of Congress to do directly what it now authorizes indirectly and to relieve the federal bankruptcy system of the burden of cases where bankruptcy petitions are filed only to avoid garnishment.

Second, I would suggest that the term "wages" in the Title of Title II and in Section 201 is probably too restrictive, and that the same is true of "wages or salary" in Section 202(a). The compensation of many of those you would want to protect from garnishment is derived, wholly or in part, from commissions and bonuses. I would suggest, instead, that the reference in the Title and in Section 201 be changed from "wages" to "personal earnings" and that in Section 202(a), the operative Section "earnings in the form of wages, salary, commission or bonus as compensation for personal service" be substituted for "wages or salary due an employee." I would delete the second reference to "employee" in Section 202(a) because of experience with the wage priority under Section 64a(2) of the Bankruptcy Act where it three times became necessary to amend the original language, "wages due to workmen, clerks, or servants," once by adding "traveling or city salesmen," again by adding "on a salary or a commission basis, whole or parttime," and finally by adding "whether or not they are independent contractors . . . with or without a drawing account." If this suggestion were followed in its entirety, Section 202(a) might read:

"No person may attach or garnish or by any similar legal or equitable process or order stop or divert the payment of earnings in the form of wages, salary, commission or bonus as compensation for personal service."

Third, I doubt the necessity of prohibiting garnishment of all earnings, regardless of size. I see no necessity for immunizing all the income of entertainers, corporate executives, etc. whose incomes approach or run into six figures.

I realize the difficulty of fixing a limit. One recent proposal suggests a poverty-level limit of $3,600, which I regard as much too low. Karlen, *Exemptions from Execution*, 22 Bus. Law. 1167, 1171 (1967). The present working draft of the Uniform Consumer Credit Code, a project of the National Conference of Commissioners on Uniform State Laws which is not yet in final form, would put the limit at $100 per week for debtors with dependents and $65 per week for others [and would limit the protection to consumer credit claims]. This seems too low to me also, but I have attached to my statement a copy of the pertinent sections of the present draft of the Code so that the Committee can examine them.

The studies of personal bankruptcies to which I have previously referred indicate that the typical bankrupt has an income of about $5,000 per year. I would take that figure as an indication that the protection against garnishment should extend considerably higher.

Figures compiled by John A. Gorman, Associate Chief, National Income Division, Office of Business Economics, U.S. Department of Commerce, and reported in the *Wall Street Journal*, May 31, 1967, p. 1, column 6, show the following average family incomes:

1949	$3,860	($3,945)
1952	4,570	(4,747)
1955	5,000	(5,275)
1958	5,670	(5,839)
1961	6,220	(6,360)
1964	7,325	
1965	7,780	
1966	8,300	

(I have been in touch with Mr. Gorman and he advises me that because of a revision in national income accounts the figures for earlier years should be revised as I have indicated in parenthesis.)

I should suppose that protection against garnishment should also extend well beyond the income of the average family. It therefore seems to me that a figure in the neighborhood of about $15,000, translated into $285 per week, would be appropriate.

Mr. Gorman's figures illustrate another problem, however. That is a problem of obsolescence, since laws like these tend not to get periodic revision—the Connecticut exemption law still saves to a debtor ten bushels of Indian corn. Obsoletness accounts for the inadequacy of many of the state wage exemption laws which employ dollar amounts. But the percentage exemption laws produce excessive exemptions for large income debtors and inadequate ones for small income debtors, regardless of the percentage used.

The present working draft of the Uniform Consumer Credit Code would solve this problem by using dollar amounts and authorizing an administrator to change them whenever there is a change of 10% or more in the U.S. Bureau of Labor Statistics Consumer Price Index for Urban Wage earners and Clerical Workers. Under H.R. 11601 the same function might well be assigned to the Federal Reserve Board.

An alternative method of handling this problem would be to tie the exemption to a legislatively-fixed figure which does seem to receive periodic revision—the amount of earnings subject to tax under Section 209 of the Social Security Act. Currently, that figure is $6,000, although H.R. 5710, as reported out by the House Committee on Ways and Means, would raise the figure to $7,600. An exemption in H.R. 11601 for twice the amount of earnings taxed under the Social Security Act would come very close to the $15,000 exemption I have suggested.

Fourth, and finally, if you go no further than to protect wages from garnishment, you may not accomplish much. In many states the creditor still will be able to reach the debtor's income by taking an advance assignment of future wages at the time of extending credit. And since employers find wage assignments as annoying as garnishments, there will be the same jeopardy to the debtor's job. Again the debtor will be driven into bankruptcy—this time to get the debt discharged so as to free his post-bankruptcy earnings from the lien of the wage assignment. Mr. Justice Fortas, while still a law student, made an exhaustive study of the use of wage assignments in Chicago. Fortas, *Wage Assignments in Chicago—State Street Furniture Co. v. Armour & Co.*, 42 Yale L. J. 526(1933). That was followed in 1935 by a statute limiting assignable wages to 25%, and limiting the effectiveness of the assignment to three years. Later reports indicated that the situation was not much improved [see Satter, *Wage Assignments and Garnishment Cited as Major Cause of Bankruptcy in Illinois*, 15 Per. Fin. L. Q. Rep. 50 (1961)], and in 1961, when Illinois

liberalized its exemption from garnishment, it also amended the Wage Assignment Law to limit assignable wages to 15%. As previously indicated, the rate of personal bankruptcies in Illinois has consistently declined since 1961. A few states have by statute prohibited such wage assignments and others, like Illinois, limit the amount of wages assignable and the period of time the assignment may cover [See Annotations, 137 A.L.R. 738(1942); 37 A.L.R. 872(1925)], but in many states they are valid and enforceable in the courts. Hence, to complete the job, I would suggest a new subsection (b) of Section 202 reading:

"No person shall take any assignment of the future earnings of another in the form of wages, salary, commission or bonus as compensation for personal service, and all such assignments shall be void and unenforceable."

If the Committee were to adopt my suggestion of a limit on earnings protected from garnishment, and considered a similar limit appropriate for wage assignments, the new subsection (b) might read:

"No person shall take any assignment of the future earnings of another in the form of wages, salary, commission or bonus as compensation for personal service save for the amount in excess of $285 per week, and no such assignment shall be valid and enforceable save for such excess."

If either of these proposals were adopted, present subsection (b) of Section 202 should be redesignated subsection (c) and amended to cover violations of either subsection (a) or subsection (b).

In conclusion let me anticipate that there will doubtless be testimony that the abolition or restriction of wage garnishments and assignments will bring ruin to the institution of consumer credit. Any witness taking this position should be invited to explain data presented to a California legislative committee by the Associated Credit Bureaus of California, and summarized by Mr. Brunn at pages 1239-1243 of volume 53 of the *California Law Review*, which indicates that installment credit thrives as well in Alabama where 75% of wages are exempt from execution, in California where as a practical matter only 50% is exempt, and in Colorado which exempts 70% for heads of families and 35% for single persons, as it does in Texas and New Jersey with 100% exemptions, or in New York with a 90% exemption, or in North Carolina which exempts up to 100% where needed for support of the debtor's family.

Congress Is Forward Looking—Congress Is Reactionary

EXTENSION OF REMARKS
OF
HON. HARRY F. BYRD, JR.
OF VIRGINIA
IN THE SENATE OF THE UNITED STATES
Friday, August 18, 1967

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent to have printed in the Appendix of the RECORD an editorial entitled "Come Again?" published in the Richmond, Va., *News Leader* of recent date.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

COME AGAIN?

"The Congress has done many positive and forward-looking things in recent years to meet [the cities'] needs." Detroit Mayor Jerome Cavanagh, August 23, 1966.

"Congress is reactionary, indifferent, sometimes completely negative." Detroit Mayor *Jerome Cavanagh, July 30, 1967.*

ASEAN

EXTENSION OF REMARKS
OF
HON. RICHARD T. HANNA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, August 10, 1967

Mr. HANNA. Mr. Speaker, last week I commented on the significance of a new regional organization in Southeast Asia called the Southeast Asian Association for Regional Cooperation. The official name taken by the member nations during the first meeting last week in Bangkok is the Association of Southeast Asian Nations—ASEAN.

The formation of the ASEAN marks an important step in the growing trend toward mutual assistance in that area. The expansion of this spirit will lead to a time when the United States and all major powers will no longer be called upon for support and defense. Southeast Asia contains more than enough resources for a potential position of influence in world affairs. Through programs like ASEAN they can be developed to their fullest extent and still belong solely to the regional nations.

I would like to introduce to the CONGRESSIONAL RECORD an editorial from the Washington Post which further elaborates on the importance of the new association:

ASIAN REGIONAL EFFORT

The impulse toward seeing and solving problems in the regional terms is making itself increasingly felt in Asia. The centrifugal pull of nationalism still overpowers the centripetal haul of regionalism; indeed, Asian nationalism's capacity to mobilize popular energies and enthusiasms, for good or ill, is striking in both Communist and non-Communist countries. And non-Communist Asia is far from creating regional institutions as strong as, for instance, the European Economic Community or the Alliance for Progress.

Yet there is discernible in Asia a developing feeling that traditional historical patterns must be either strengthened or supplanted, as the case may be, in order to forge regional ties of relevance today. The latest sign is the formation of the Association of South East Asian Nations. Composed of Thailand, the Philippines, Indonesia, Malaysia and Singapore, "ASEAN" joins a company which already includes the geographically wider Asian and Pacific Council and the functional Asian Development Bank, among otehrs. ASEAN's aims are chiefly economic. Its first step, beyond its own birth, will be to study measures for cooperation in tourism, fisheries and trade.

It is gratifying to see Indonesia taking part; ASEAN's standing committee will be located in Djakarta. Under Sukarno, Indonesia followed an adventurist foreign policy which brought it into collision with the neighbors, particularly Malaysia, which it is now conciliating. Its present goals are more modest, realistic and pacific. One hopes that South Vietnam and Cambodia will soon join. For the essential aspect of a regional organization is that it be geographically comprehensive, not a club. It is perhaps worth noting that nothing in ASEAN's charter precludes eventual membership by a Communist country.

For the United States, the appeal of ASEAN and organizations like it is the prospect that eventually their members will be able to stand on their own. This country's role in Asia is not to batten and stay forever but to equip its friends to do without it, some day.

Honorary Degrees Awarded by Baylor University, Waco, Tex., to Tom Lea and Carl Hertzog, Outstanding Texas Men of Letters

EXTENSION OF REMARKS
OF
HON. RALPH YARBOROUGH
OF TEXAS
IN THE SENATE OF THE UNITED STATES
Friday, August 18, 1967

Mr. YARBOROUGH. Mr. President, outstanding in the field of literature and of art in Texas are two men whose names are known throughout the United States: Tom Lea, author and artist, and Carl Hertzog, publisher and book designer. Recently these two men were recognized by Baylor University, in Waco, Tex., for their outstanding contributions to literature of the Southwest by the award of honorary doctorates.

These two figures who have given such glory to their State and to their Nation are richly deserving of honor, and I commend Baylor University highly on its choice of these recipients of honorary degrees. The impressive record of their achievements was reproduced in the Baylor Line, the university's magazine, of May and June 1967, and inspired me with renewed respect for these two great Americans and great Texans.

Mr. President, I ask unanimous consent that the biographical sketches of these two great men be printed in the Appendix of the RECORD.

There being no objection, the sketches were ordered to be printed in the RECORD, as follows:

Lea and Hertzog were awarded honorary Doctor of Literature degrees in recognition (in the words of President McCall) "of their major contributions to the culture of Texas and the Southwest."

Lea, a versatile writer, painter, muralist, illustrator, and historian, is the author of several outstanding books on Southwestern subjects, including "The Brave Bulls," which has won two best-novel awards and was also made into a successful motion picture; "The King Ranch," a two-volume work on the fabulous Texas cattle kingdom with the author's illustrations; and "The Wonderful Country," and adventure story and prose poem which was also made into a movie. He served as a World War II correspondent for *Life Magazine* and not only wrote notable war accounts but executed a number of wartime paintings which now hang in the Pentagon.

In 1946 Life commissioned him to illustrate the historical development of the cattle