

Submission No: .....73.....

**Wilson, Frances (REPS)**

**From:** Terry Dwyer [terry.dwyer.phd@post.harvard.edu]  
**Sent:** Wednesday, 16 June 2004 9:35 AM  
**To:** Committee, LACA (REPS)  
**Subject:** Submission - Bankruptcy Anti-avoidance legislation

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BY Gillian Gould

Dear Sirs

I draw to the Committee's attention that when I inquired as to the Constitutional head of power for the proposed legislation, I was advised that no advice would be forthcoming.

I request the Committee make its own inquiries as to the Constitutional validity or otherwise of the Bill and publish its legal advice.

There seems to be some logical difficulty in asserting that a *solvent* person cannot do as he wishes with his money or property. A law founded on the opposite assumption is hardly a law with respect to bankruptcy. It seems to be rather a law for the unjust acquisition of property - to seize A's property to pay B's debts, for example, seems to be a Constitutionally questionable legislative adventure.

Freedom of contract and disposition are fundamental to the common law. To attack these is to take an axe to the roots of your greatness (to borrow a metaphor from Charles James Fox's celebrated speech on freedom of speech).

Wise legislation ought to be, above all, just, disinterested, dispassionate and unchanging. It should certainly not be driven by fickle newspaper headlines or instant editorial opinions. If a man cannot pay his debts here and now, the work of his whole life does not stand as a retrospective surety - what is gone is gone (and the current law seems perfectly adequate to deal with frauds on creditors).

If legislation is not just and measured, then people will feel aggrieved and see no moral slight on their honour in seeking to avoid or evade its repressive strictures. As Adam Smith observed about smuggling, this in turns leads to a corruption of public morality so that even good and just laws are dragged into contempt.

If appeals to disinterested justice are not a consideration of moment to the Committee, then might I also note that the avarice of government also stands against this proposed legislation, as it is hard to conceive of any measure better designed to promote the flight of capital from this country, to the detriment of its prosperity and the revenues of government.

Yours sincerely

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