bring these very worthy initiatives to the floor. I appreciate their support and their effort.

Mr. Speaker, I urge our colleagues to support this legislation, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. MCHUGH) that the House suspend the rules and pass the bill, H.R. 2799.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MCHUGH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 2799.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

□ 1530

RELIGIOUS LIBERTY AND CHARITABLE DONATION PROTECTION ACT OF 1998

Mr. GEKAS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2604) to amend title 11, United States Code, to protect certain charitable contributions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2604

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Religious Liberty and Charitable Donation Protection Act of 1998''.

SEC. 2. DEFINITIONS.

Section 548(d) of title 11, United States Code, is amended by adding at the end the following:

''(3) In this section, the term 'charitable contribution' means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—

''(A) is made by a natural person; and

''(B) consists of—

''(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

''(ii) cash.

''(4) In this section, the term 'qualified religious or charitable entity or organization' means—

''(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

''(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.''.

SEC. 3. TREATMENT OF PRE-PETITION QUALIFIED CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Section 548(a) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by striking ''(1) made'' and inserting ''(A) made'';

(3) by striking ''(2)(A)'' and inserting ''(B)(i);

(4) by striking ''(B)(i)'' and inserting ''(ii)(I)'';

(5) by striking ''(ii) was'' and inserting ''(II) was'';

(6) by striking ''(iii)'' and inserting ''(III)''; and

(7) by adding at the end the following:

''(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

''(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

''(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.''.

(b) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS.—Section 544(b) of title 11, United States Code, is amended—

(1) by striking ''(b) The trustee'' and inserting ''(b)(1) Except as provided in paragraph (2), the trustee''; and

(2) by adding at the end the following:

''(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.''.

(c) CONFORMING AMENDMENTS.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (e)—

(A) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(B) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)'';

(2) in subsection (f)—

(A) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(B) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)''; and

(3) in subsection (g)—

(A) by striking ''section 548(a)(1)'' each place it appears and inserting ''section 548(a)(1)(A)''; and

(B) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''.

SEC. 4. TREATMENT OF POST-PETITION CHARITABLE CONTRIBUTIONS.

(a) CONFIRMATION OF PLAN.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting before the semicolon the following: '', including charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made''.

(b) DISMISSAL.—Section 707(b) of title 11, United States Code, is amended by adding at the end the following: ''In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).''.

SEC. 5. APPLICABILITY.

This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act.

SEC. 6. RULE OF CONSTRUCTION.

Nothing in the amendments made by this Act is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

The SPEAKER pro tempore (Mr. PEASE). Pursuant to the rule, the gentleman from Pennsylvania (Mr. GEKAS) and the gentleman from New York (Mr. NADLER) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GEKAS).

GENERAL LEAVE

Mr. GEKAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GEKAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge adoption of this legislation and wish to set the stage for some of the comments that we will hear during the debate on this measure.

This issue was brought to our attention by the gentlewoman from Idaho (Mrs. CHENOWETH) and the gentleman from California (Mr. PACKARD) on two separate pieces of legislation that dealt with the same issue. Their legislative efforts came from different angles and from different perspectives, but the ultimate purpose was the same: to try to rectify a situation in which a contributor to a charitable organization, for the purpose of our hypothetical say to a church organization, makes a contribution, he subsequently files for bankruptcy, and a decision is made by the bankruptcy court and direction is given to the bankruptcy trustee to recover that amount paid by contribution to the church because it came within a certain period of time and, therefore, was not subject to be clear of the bankruptcy laws. So now we have the strange situation of a bankruptcy trustee having to assert a claim against a church.

Mr. Speaker, that seemed unseemly to a great number of people. The gentlewoman from Idaho and the gentleman from California took to the legislative process to try to bring about a change. Hence their legislation, hence the action of the Committee on the Judiciary, and we have arrived at this stage.

What we have done ultimately is to mirror, or try to mirror as much as we can, the Senate version of this same issue in legislation that they have passed so that we can be better prepared when the time comes for ultimate decision to be made by a conference in the two bodies. That is why we have come to the floor at this moment with the vehicle being H.R. 2604.

Mr. Speaker, after the gentleman from New York (Mr. NADLER) presents his opening statement, I will yield to these two Members so that they can fully explain the contents of the legislation, the purpose, et cetera.

Mr. Speaker, I urge adoption of H.R. 2604, the ''Religious Liberty and Charitable Donation

Protection Act of 1998'' This legislation, introduced by my colleague, Mr. PACKARD, on October 2, 1997, has as of today more than 120 bipartisan co-sponsors. It was reported out of the Judiciary Committee without objection.

H.R. 2604, with amendment, which is before you for consideration today, contains one substantial change from the bill as reported by the Judiciary Committee which is in accord with the members of the other body. The additional provision it contains prevents creditors from using remedies available under state law to avoid transfers of religious or charitable contributions. H.R. 2604, as amended, is now identical to its Senate counterpart, S. 1244, which passed the other body on a vote of 100 to 0 on May 13, 1998. Favorable action today in this body can send this legislation to the President for his approval.

The principal component of H.R. 2604 protects certain prepetition charitable contributions made by an individual debtor to qualified religious or charitable entities within one year preceding the filing date of the debtor's bankruptcy petition from being subsequently avoided by a bankruptcy trustee under Section 548 of the Bankruptcy Code. The bill defines ''charitable contribution'' and ''qualified religious or charitable entity or organization'' by reference to applicable provisions of the Internal Revenue Code. In addition, its sets certain limits on the amount of charitable contributions that would be exempt from Section 548.

Important policy considerations support this bill. Voluntary donations should be treated differently than other types of property transfers under the Bankruptcy Code. The inherent nature of charitable contributions is that they are made specifically without the intent of receiving anything in return. This principal is recognized in the Internal Revenue Code's provisions concerning the deductibility of certain charitable contributions.

Under current law, the courts often conduct a very fact-specific analysis to determine whether a debtor received reasonably equivalent value in exchange for a charitable contribution. In the religious context, courts consider, for example, whether the debtor received certain services from the religious entity, such as counseling, in exchange for his or her donation. This analysis essentially places courts in the untenable position of having to value spiritual benefits and has led to disparate case law development.

Other policy considerations favoring the exemption of charitable contributions from the purview of Section 548 include the fact that religious and charitable organizations provide valuable services to society and serve the common good. Another consideration is the fact that most religious and charitable organizations simply lack the funds to litigate a recovery action filed a bankruptcy trustee under Section 548 and therefore must simply return the funds received. Particularly in light of the longer reachback period permitted under state law made applicable under Section 544(b) of the Bankruptcy Code, a charitable organization or religious entity may have to return funds it received from a debtor over a period extending several years.

The bill also addresses problems presented by the current unclear state of the law that exists in light of a recent decision by the Supreme Court that places the continuing validity of the Religious Freedom Restoration Act in doubt.

It is important to keep in mind that H.R. 2604 is not intended to diminish any of the protections against prepetition fraudulent transfers available under section 548 of the Bankruptcy Code. First, it applies to transfers that a debtor makes on an aggregate basis during the one-year reachback period preceding the filing of the debtor's bankruptcy case. Second, if a debtor, on the eve of filing for bankruptcy relief, suddenly donates 15 percent of his or her gross income to a religious organization, the debtor's fraudulent intent, if any, would be subject to scrutiny under section 548(a)(1) of the Bankruptcy Code. This fifteen percent ''safe harbor'' merely shifts the burden of proof and limits litigation to where there is evidence of a change in pattern large enough to establish fraudulent intent.

In addition, H.R. 2604 protects the right of certain debtors to tithe or make charitable contributions after filing for bankruptcy relief. This protection is required because some courts have held that tithing is not a reasonably necessary expense or have dismissed these debtors' bankruptcy cases on the ground that such tithing constituted a ''substantial abuse'' under section 707(b) of the Bankruptcy Code.

For all of these laudatory reasons, I urge the adoption of H.R. 2604, as amended.

Mr. Speaker, I reserve the balance of my time.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to begin by thanking the honorable gentleman from California (Mr. PACKARD), my friend, for originally introducing this legislation. I also thank the honorable gentleman from Pennsylvania (Mr. GEKAS), for bringing this legislation forward.

Mr. Speaker, given the spirited debates we have been having on our subcommittee and on the full committee on certain other bankruptcy legislation the gentleman is sponsoring, I am glad we have been able to work together to develop this bill and to bring it to the floor as bipartisan legislation today.

This bipartisan legislation would protect religious and other charitable institutions that receive donations from individuals who later declare bankruptcy, and would permit debtors in bankruptcy to continue to make donations to such organizations of up to 15 percent of their gross annual income.

This bill is needed to address a problem that originated with the Supreme Court's decision in 1990 in Employment Division versus Smith, which said that the government may impose substantial burdens on an individual's free exercise rights so long as the government does so in a manner that is facially neutral toward religion.

Congress attempted to correct this decision in 1993 by enacting the Religious Freedom Restoration Act, RFRA. The Court of Appeals in the Eighth Circuit ruled in 1996 that RFRA protected tithed donations to a charitable organization from creditors in bankruptcy proceedings.

The following year, last year, the Supreme Court unfortunately struck down RFRA in City of Boerne versus Florez, and later, in accordance with its decision in Boerne that RFRA was unconstitutional, vacated and remanded the Eighth Circuit decision.

Since the Supreme Court decision struck down RFRA only with respect to State laws, however, it is uncertain today whether RFRA remains good law as applied to Federal statutes such as the Bankruptcy Code. While the Supreme Court may ultimately decide this question, I see no reason to wait for a decision when a simple and straightforward remedy is at hand as to the tithing problem.

This legislation would protect religious and charitable donations in bankruptcy proceedings by clarifying that they are not ''fraudulent transfers'' within the meaning of the statute. As modified by the Senate language, the legislation also deals with the problem of State fraud statutes which might otherwise, under some circumstances, be used to undercut the Federal protection which I trust we will institute today. So this legislation takes care of that potential problem.

Mr. Speaker, I would like at this time to engage the gentleman from Pennsylvania (Mr. GEKAS) in a colloquy to confirm my understanding of the legislative intent with respect to section 3(a) of this bill which adds a new section 548(a)(2)(A) to title 11 of the U.S. Code. This section provides a safe harbor for qualified contributions of up to 15 percent of the debtor's gross annual income for the year in which such contributions were made. Under the new section 548(a)(2)(B), if the debtor's aggregate donations exceed 15 percent, the debtor would have to establish that the transfer was consistent with his or her prior pattern of charitable giving in order for that donation to be protected.

Mr. Speaker, I would ask the gentleman from Pennsylvania (Mr. GEKAS) to confirm my understanding as set forth in the committee report that the intent of this provision is to protect qualified contributions of up to 15 percent of the debtor's gross annual income in the aggregate for the year in which the contribution was made, and that we do not intend this language to allow multiple contributions to a given organization or to more than one organization which in the aggregate exceed 15 percent of the debtor's gross annual income to be protected. Would the gentleman confirm whether this is his understanding as well?

Mr. GEKAS. Mr. Speaker, will the gentleman yield?

Mr. NADLER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Speaker, I appreciate the opportunity at this juncture to explain in response to the gentleman's question that this legislation is not intended to diminish any of the protections against pre-petition, fraudulent transfers available under section 548 of the Bankruptcy Code.

First, it applies to transfers that a debtor makes, and I emphasize this, on

an aggregate basis during the one year reach-back period to which the gentleman has referred proceeding the filing of the debtor's bankruptcy case.

Second, if the debtor on the eve of filing for bankruptcy relief suddenly donates 15 percent of his or her gross income to a religious organization, the debtor's fraudulent intent, if any, would be subject to scrutiny under section 548(a)(1) of the Bankruptcy Code. This 15 percent safe harbor merely shifts the burden of proof and limits litigation to where there is evidence of a change in pattern large enough to establish fraudulent intent. We hope this satisfies the inquiry that the gentleman has posed.

Mr. NADLER. Mr. Speaker, reclaiming my time, I thank the gentleman very much for his response. Yes, indeed it does satisfy the inquiry. I thank the gentleman for his assistance in clarifying the intent of the legislation and of the Congress in regard to this matter. Mr. Speaker, I urge my colleagues to adopt this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. PACKARD).

(Mr. PACKARD asked and was given permission to revise and extend his remarks.)

Mr. PACKARD. Mr. Speaker, I thank the gentleman from Pennsylvania (Mr. GEKAS) for yielding me this time. I would like to take this moment to heartily thank the gentleman from Illinois (Mr. HYDE), chairman of the full Committee on the Judiciary, the gentleman from Pennsylvania (Mr. GEKAS), the chairman of the subcommittee, and the gentleman from New York (Mr. NADLER), the ranking Democrat on the subcommittee, for bringing this bill to the floor today and for their support of the Religious Liberty and Charitable Donations Protection Act which is before us.

Mr. Speaker, in the Old Testament it says, ''Will a man rob God? Yet ye have robbed me. But ye say, Wherein have we robbed thee? In tithes and offerings. Bring ye all the tithes into the storehouse, that there may be meat in mine house, and prove me now herewith, sayeth the Lord of Hosts, if I will not open you the windows of heaven, and pour you out a blessing, that there shall not be room enough to receive it.''

To many Christians this is a sacred commandment, and they cannot practice their religions unless they can obey this commandment that says they need to bring their tithes to Him.

A person often in times of financial and other problems turns to God and their church for strength and for blessings. To close those windows of heaven and prevent God from pouring out a blessing at the very time that bankrupt families need His blessings would be unconscionable, for the law of the land to prevent a person from being able to practice that part of their religion.

Mr. Speaker, many churches and charitable organizations across this country live from hand to mouth, when what comes into the collection plate on one day is usually spent the next. When a creditor is allowed to sue a church or a charity in order to recover a donation made possibly months or even years earlier, the church or charity is usually put in a position of hardship. What is more, they rarely have the ability or the resources to fight the suit in court. In some cases, that can lead to financial ruin for the church or for the charitable organization.

I do not believe that a church or a charity that receives a tithe or a donation ought to have to check the financial background of the donor before they donate. They certainly should not be penalized for receiving a donation from anybody, but that is exactly what current law requires.

My bill, along with Senator GRASSLEY's bill, S. 1244, would correct this problem. In addition to protecting churches and charities, our bill also assists the individual donor himself. Currently, a person who files for bankruptcy under chapter 13 is not allowed to make charitable contributions or tithes to a church. Amazingly, the court has said that in making this type of contribution, the donor receives nothing of value in return. Mr. Speaker, I cannot accept this. I contribute to my church and I am here to say that I do receive something of significant value, and it is tangible to me, in return.

Under chapter 13, a person can go to a bar, to a beer hall. They can get advice on a 1–900 psychic advice line. They can gamble their money away. They can fill their basement full of alcohol. But they cannot contribute to their church or to a charity. That is unconscionable and ought to be corrected, and this bill will correct that.

I hope and pray that every Member of this House will follow the lead of the Senate. The Senate, when this was called for on a rollcall vote on the floor of the Senate, 100 Senators voted for it. Not a single one voted against it. We hope the House will follow that example.

Again, I thank the gentlemen from Pennsylvania (Mr. GEKAS), the chairman of the subcommittee, and the gentleman from New York (Mr. NADLER), ranking member, for bringing this to the floor of the House today.

Mr. Speaker, I submit the following three letters that deal with this bill for inclusion in the RECORD:

CHRISTIAN LEGAL SOCIETY,
Annandale, VA, May 13, 1998.

Re support for H.R. 2604.

Hon. RON PACKARD,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE PACKARD: The 4,000 member attorneys and law students of the Christian Legal Society unequivocally endorse your ''Religious Liberty And Charitable Donation Protection Act,'' for a number of reasons.

First, your bill would prevent bankruptcy trustees or creditors under section 544 from using state fraudulent transfer laws that allow confiscation of donations going back as far as six years prior to bankruptcy filing. H.R. 2611 does not.

Second, H.R. 2604 ensures the right of Americans to continue to give to their church or charity while they are paying off their debts pursuant to a Chapter 13 plan. Otherwise, religious believers will be barred for years from exercising this form of worship. H.R. 2611 does not address Chapter 13.

Third, H.R. 2604 would protect tithes and offerings received by churches and charities from donors who gave either from a sense of religious obligation or motivation. Some judges will inevitably conclude that the clause in H.R. 2611 that limits protection to gifts made ''from a sense of religious obligation'' does not extend to the millions of Americans who give not because of a commandment but out of gratitude to God.

Fourth, H.R. 2604 is constitutionally sound. It extends protection to donations given to religious as well as non-religious donees. H.R. 2611 only protects gifts to ''a religious group or entity''; consequently, it is likely to be challenged as violative of the First Amendment's prohibition on an establishment of religion.

With the Senate's near unanimous approval today of the identical Grassley language (S. 1244), it is apparent that H.R. 2604 enjoys broad bipartisan support. The Packard-Grassley bill can pass this Congress, providing immediate relief for churches and ministries that are otherwise bound to continue losing in the courts. Unlike H.R. 2611, it would protect debtors in Chapter 13 who wish to continue their donations. Unlike H.R. 2611, H.R. 2604 would prevent the misuse of state laws to confiscate multiple years of giving. And H.R. 2604 would protect far more churches (not just those that require tithing) and would not likely be a target of a lawsuit challenging its constitutionality.

For any and all of these reasons, Christian Legal Society will work for the earlier passage in the House of H.R. 2604.

Respectfully,

STEVEN T. MCFARLAND,
Director, Center For Law and Religious Freedom.

P.S. We understand that some may question whether the 15% figure in section 3 of H.R. 2604 is a cap. We believe the answer is clearly ''no.'' Rather than inviting trustees across the country to litigate over whether the tithe was a consistent practice of the donor, H.R. 2604 creates a bright-line test, a ''safe harbor'' that defuses this issue. Churches would not have to waste precious funds on legal fees defending their offerings in court. It would be clear; if the donations are no more than 15%, then trustee cannot challenge them, unless he has evidence of actual fraud (section 548a(1) would remain available). With the 15% shield, Congress would be clarifying what creditors cannot challenge, not prescribing how much a donor should give. A donor can give more than 15% of his income to charity, but will have to prove that this has been his consistent practice over several years.

SCHOOL OF LAW,
THE UNIVERSITY OF TEXAS AT AUSTIN,
Austin, TX, May 6, 1998.

Hon. RON PACKARD,
Rayburn House Office Building,
Washington, DC.

DEAR REP. PACKARD: The question has arisen whether S. 1244 and H.R. 2604 would protect unincorporated churches. The answer is yes; unincorporated churches would be protected.

These bills protect organizations defined in §170(c)(2) of the Internal Revenue Code,

which includes any ''corporation, trust, or community chest, fund, or foundation'' organized and operated exclusively for charitable, religious, or other listed purposes. The Internal Revenue Code defines ''corporation'' to include an ''association.'' 26 U.S.C. §7701(a)(3). An unincorporated association may also be a ''fund.''

The language of §170(c)(2) dates to shortly after World War I. Related sections drafted more recently use the word ''organization,'' which more obviously includes unincorporated associations. *See, e.g.,* §170b and §§502–511. The implementing regulations under §170 and §501(c)(3) also used the word ''organization.'' 26 C.F.R. §§1.170 and 1.501. ''Organization'' does not appear to be a defined term. But Treasury Regulations define ''articles of organization'' in inclusive terms: ''The term 'articles of organization' or 'articles' includes the trust instrument, the corporate charter, *the articles of association,* or any other written instrument by which an organization is created.'' 26 C.F.R. §1.501(c)(3)(b)(2) (emphasis added). ''Articles of association'' clearly seems designed to include unincorporated associations.

The clearest statement from the Internal Revenue Service appears to be Revenue Procedure 82–2 (attached), which sets out certain rules for different categories of tax exempt organizations. Section 3.04 provides a rule for ''Unincorporated Nonprofit Associations.'' This Procedure treats the question as utterly settled and noncontroversial.

Tax scholars agree that §170 includes unincorporated associations. The conclusion appears to be so universally accepted that there has been no litigation and no need to elaborate the explanation. The leading treatise on tax-exempt organizations states: ''An 'unincorporated association' or 'trust' can qualify under this provision, presumably as a 'fund' or 'foundation' or perhaps, as noted, as a 'corporation.'" Bruce R. Hopkins, *The Law of Tax-Exempt Organizations* §4.1 at 52 (7th ed. 1997).

Borris Bittker of Yale and Lawrence Lokken of NYU say: ''Since the term 'corporation' includes associations and 'fund or foundation' as used in IRC §501(c)(3) is construed to include trusts, the technical form in which a charitable organization is clothed rarely results in disqualification.'' Boris I. Bittker & Lawrence Lokken, 4 *Federal Taxation of Income, Estates and Gifts* ¶100.1.2 at 100–6 (2d ed. 1989).

Closely related provisions of the Code expressly cover churches. I.R.C. §170(b)(1) states special rules for a subset of organizations defined in §170(c), including ''a church, or a convention or association of churches.'' I.R.C. §508(c)(1) provides that ''churches, their integrated auxiliaries, and conventions or associations of churches'' do not have to apply for tax exemption. These provisions plainly contemplate that churches are covered; they also prevent the accumulation of IRS decisions granting tax exempt status to unincorporated churches. These churches are simply presumed to be exempt.

There are tens of thousands of unincorporated churches in America. I am not aware that any of these churches has ever had difficulty with tax exemption or tax deductibility of contributions because of their unincorporated status. I work with many church lawyers and religious leaders, and none of them has ever mentioned such a problem. There are no reported cases indicating litigation over such a problem. If unincorporated churches were having this problem, Congress would have heard demands for constituent help or corrective legislation.

The fact is that legitimate unincorporated churches that otherwise qualify for tax deductibility under §170 and for tax exemption under §501(c)(3) are not rendered ineligible by their failure to incorporate. There is so little doubt about that that neither Congress, the IRS, nor the courts has ever had to expressly elaborate on the rule that everyone knows. This is a question that can be safely dealt with in legislative history affirming Congress's understanding that unincorporated associations are included in §170(c)(2) and Congress's intention that they be protected by these bills.

I consulted informally with Deirdre Halloran, the expert on tax exempt organizations at the United States Catholic Conference, and with tax professors here and elsewhere, who confirmed these conclusions. Ms. Halloran would be happy to respond to inquiries from your office if you need a second opinion.

Very truly yours,

DOUGLAS LAYCOCK.

REV. PROC. 82–2

SECTION 1. PURPOSE

The purpose of this revenue procedure is to identify the states and circumstances in which the Service will not require an express provision for the distribution of assets upon dissolution in an exempt organization's articles of incorporation, trust instrument, or other organizing document to satisfy the ''organizational'' test in section 1.501(c)(3)–1(b)(4) of the Income Tax Regulations. Also, this procedure provides a sample of an acceptable dissolution provision for organizations that are required to have an express provision for the distribution of assets upon dissolution.

SEC. 2. BACKGROUND

.01 Section 1.501(c)(3)–1(b)(4) of the regulations provides that:

''(4) *Distribution of assets on dissolution.* An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court *to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.* However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders. [Emphasis added.]

.02 The issue of the applicability of state law in relation to section 1.501(c)(3)–1(b)(4) of the regulations as to a particular organization arises only where the organization itself has not provided for the distribution of its assets upon dissolution in its articles of incorporation, organizing document, or trust instrument. When state law satisfies the provisions of section 1.501(c)(3)–1(b)(4), it is not necessary to require an organization to amend its articles of incorporation or organizing document, or to require a trust to obtain a judicial decree amending its trust instrument, in order to satisfy the organizational test for qualification as an exempt organization described in section 501(c)(3) of the Code, where all the other requirements for exemption are met.

.03 The issue of whether section 1.501(c)(3)–1(b)(4) of the regulations is satisfied under state law can be broken down into four areas according to the type of entity involved:

(1) the *cy pres* doctrine as to *inter vivos* charitable trusts;

(2) the *cy pres* doctrine as to testamentary charitable trusts, which can exist in a particular state by case law and/or by statute;

(3) state corporate law containing statutes that provide for the distribution of assets upon the dissolution of nonprofit corporations; and

(4) state law by court decision or statute relating to unincorporated associations.

Each of these four areas will be treated separately in this revenue procedure.

SEC. 3. GUIDELINES

.01 Inter Vivos Charitable Trusts.

1. Because there is no guarantee under the law of any jurisdiction, except Delaware, that *cy pres* would be used to keep an *inter vivos* charitable trust from failing, any *inter vivos* charitable trust, except in Delaware, should be required to have an adequate dissolution provision in its trust instrument to satisfy the requirements of section 1.501(c)(3)–1(b)(4) of the regulations.

.02 Testamentary Charitable Trusts.

1. The courts in the following states always apply the *cy pres* doctrine or the doctrine of equitable approximation to keep a charitable testamentary trust from failing, and thus section 1.501(c)(3)–1(b)(4) of the regulations with respect to charitable testamentary truss is satisfied:

Alabama.
Delaware.
Louisiana.
Pennsylvania.
South Dakota.
Virginia.

West Virginia (However, a state court decision has held that the *cy pres* doctrine does not apply to a scientific organization in West Virginia.)

2. The courts in the jurisdictions listed below will apply the *cy pres* doctrine to keep a charitable testamentary trust from failing when the language of the trust instrument demonstrates that the settlor had a general intent to benefit charity, and not merely a specific intent to benefit a particular institution. In such jurisdiction the *cy pres* doctrine may be relied upon by a charitable testamentary trust to satisfy section 1.501(c)(3)–(b)(4) of the regulations only when the settlor has demonstrated a general charitable intent in the language of the trust instrument. Unless the testator manifests a general intent to benefit charity, the Service will require the testamentary charitable trust to provide an express dissolution provision in the trust instrument to satisfy section 1.501(c)(3)–1(b)(4).

Arkansas.
California.
Colorado.
Connecticut.
District of Columbia.
Florida.
Georgia.
Illinois.
Indiana.
Iowa.
Kansas.
Kentucky.
Maine.
Maryland.
Massachusetts.
Michigan.
Minnesota.
Mississippi.

Missouri—MO. ANN. STAT. §352.210.3 satisfies the provisions of section 1.501(c)(3)–1(b)(4) of the regulations while MO. ANN. STAT. §355.230.(3) does not satisfy the requirements.

Nebraska.
New Hampshire.
New Jersey.
New York.
North Carolina.
Ohio.
Oklahoma.
Oregon.

Rhode Island.
Tennessee.
Texas.
Vermont.
Washington.
Wisconsin.

3. Charitable testamentary trusts in the following states need a dissolution provision in the trust instrument to satisfy section 1.501(c)(3)–1(b)(4) of the regulations because these states have either expressly rejected or have never applied the *cy pres* doctrine:

Alaska.
Arizona.
Hawaii.
Idaho.
Montana.
Nevada.
New Mexico.
North Dakota.
South Carolina.
Utah.
Wyoming.

.03 Nonprofit Charitable Corporations.

1. The statutes applicable to nonprofit charitable corporations in the states listed below will satisfy the provisions of section 1.501(c)(3)–1(b)(4) of the Regulations:

Arkansas.
California.
Louisiana.
Massachusetts.
Minnesota.
Missouri.
Ohio.
Oklahoma.

All other states, and the District of Columbia do not have statutes applicable to nonprofit charitable corporations that will satisfy the provisions of section 1.501(c)(3)–1(b)(4). Thus, nonprofit corporations in the eight named states do not need a dissolution provision to satisfy section 1.501(c)(3)–1(b)(4). A nonprofit corporation in a jurisdiction not listed needs an adequate dissolution provision in its organizing document to satisfy section 1.501(c)(3)–1(b)(4).

.04 Unincorporated Nonprofit Associations.

None of the fifty-one jurisdictions provides certainty by statute or case law, for the distribution of assets upon the dissolution of an unincorporated nonprofit association. Therefore, any unincorporated nonprofit association needs an adequate dissolution provision in its organizing document to satisfy the requirements of section 1.501(c)(3)–1(b)(4) of the regulations.

.05 Sample Dissolution Provision.

1 For any organization that needs a dissolution provision in its organizing instrument to satisfy the provisions of section 1.501(c)(3)–1(b)(4) of the regulations, the following language is illustrative of what may be used:

(a) *Upon the dissolution of [this organization] assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose.*

.06 Periodic Update.

This Revenue Procedure will be updated periodically as changes in state laws come to the attention of the Service.

HOME SCHOOL
LEGAL DEFENSE ASSOCIATION,
Purcellville, VA, May 8, 1998.

DEAR SENATOR GRASSLEY AND REPRESENTATIVE PACKARD, I received a copy of the letter from Professor Doug Laycock concerning my question regarding the inclusion of unincorporated associations in S. 1244 and H.R. 2604. His letter more than answers my question.

Although an attorney with substantial constitutional practice, I am not a non-profit tax expert by any means. Doug Laycock has outstanding credentials in all relevant areas and his opinion is conclusive for me.

I would note that the expert commentators he quotes appear to point to different terms in the phrase ''corporation, trust, or community chest, fund, or foundation'' to include unincorporated churches. Taken literally, unincorporated associations do not fall in any of these categories. Reading laws literally is generally a good idea, but was my mistake on this occasion.

Despite the lack of statutory clarity, the practice of the IRS appears clear. And if an appropriate legislative record is made, this should settle the matter for all judges with the possible exception of Justice Scalia.

Thanks for getting an answer so quickly.

Sincerely,

MICHAEL FARRIS,
President.

Mr. GEKAS. Mr. Speaker, I yield 4 minutes to the gentlewoman from Idaho (Mrs. CHENOWETH).

Mrs. CHENOWETH. Mr. Speaker, I rise to engage in a colloquy with the gentleman from California (Mr. PACKARD), my friend and the author of this bill.

As the gentleman knows, I have legislation that also addresses the issue of bankruptcy trustees disgorging from innocent churches the tithes of members who have filed for bankruptcy. I applaud the gentleman's efforts and thank him very much for his hard work.

As we have discussed together numerous times, our primary concern is that anything that we do to address this issue will not lead to the future government regulation of the church and the interference in the free exercise of religion. We have had many discussions over that.

Mr. Speaker, with the passage of H.R. 2064, we provide the Federal Government absolutely no opportunity to extend its reach to regulate churches in this country. I would ask, is that the intent of the gentleman's legislation?

□ 1545

Mr. PACKARD. Mr. Speaker, will the gentlewoman yield?

Mrs. CHENOWETH. I yield to the gentleman from California.

Mr. PACKARD. Absolutely, the gentlewoman is certainly right. I have no intentions in this bill or in any other way for the government to regulate churches.

Mrs. CHENOWETH. Mr. Speaker, I thank the gentleman.

With the passage of H.R. 2604, there is no opportunity to have the Federal Government define tithes or to place a floor or a limit on the amount of tithes that a parishioner can give to his or her church. Is that the gentleman's intent?

Mr. PACKARD. Mr. Speaker, that is certainly my intent.

Mrs. CHENOWETH. And, Mr. Speaker, it is my understanding of the intent of H.R. 2604 that we are not including churches in the same legal classifications as 501(c)(3)s, which are an artificial creation of the State, while the churches are a creation of God. Is this the intent of H.R. 2604?

Mr. PACKARD. Mr. Speaker, the gentlewoman is correct.

Mrs. CHENOWETH. Lastly, Mr. Speaker, in solving this problem between churches and the bankruptcy courts, we are not intending the Federal Government to be involved in any way in overriding scripture or taking away the autonomy and the free exercise of religion in America's churches. Is this the intent of H.R. 2604?

Mr. PACKARD. Mr. Speaker, if the gentlewoman will continue to yield, it is certainly the intent of the bill.

Mrs. CHENOWETH. Mr. Speaker, I want to thank the gentleman from California (Mr. PACKARD) for all of his hard work on this issue. I also want to thank his staff for their hard work. The gentleman is a true champion of religious freedom, and he has my deepest respect and admiration. I want to thank the gentleman and my friend from California.

I also join with the gentleman from California (Mr. PACKARD) in thanking the gentleman from Illinois (Mr. HYDE), the gentleman from Pennsylvania (Mr. GEKAS) and the ranking member, the gentleman from New York (Mr. NADLER).

Mr. PACKARD. Mr. Speaker, if the gentlewoman will continue to yield, I want to personally thank her for her leadership on this issue. She wrote a bill that is very similar and I think it has the same basic goals. I applaud the gentlewoman for that. I have sponsored her bill. It is just that this was the bill that moved through the committee structure. I thank the gentlewoman very much.

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume.

I simply wanted to make a number of observations on this bill.

One, this bill does afford to religious institutions and to nonreligious charitable institutions the same protection. If someone in good faith gives a charitable contribution, whether to a church or the American Cancer Society, the trustee in bankruptcy, if the person subsequently declares bankruptcy, should not go into the church or to the Cancer Society or the Lung Society, whatever it may be, and try to get them to repay the money. That is what this bill does. It sets up those protections.

The second thing I want to say, in light of what I said earlier about the history of this bill, the religious liberty protections, is that some of us in this House are very strong advocates of separation of church and State. I will be opposing the so-called Istook amendment on the floor later in the week. We do believe very strongly in the separation of church and State, but we also believe that government should not be hostile to religion and government should be accommodating to people with religious beliefs and also to people with charitable intentions, and this legislation is very much in that direction.

I think no matter what position someone may take on some of the

other legislation such as the Istook amendment, we can all unite in supporting this type of legislation which does not breach the will of separation of church and State but says that the freedom to contribute money to the church or to the synagogue or the mosque or to the nonreligious charitable institution should not be violated and that government should not be hostile to these institutions.

Again, I thank my colleague from Pennsylvania and my colleague from California for their leadership in bringing this bill to the floor. I urge all my colleagues to vote for it.

Mr. Speaker, I reserve the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Speaker, I thank the chairman for yielding me this time and commend the gentleman from California (Mr. PACKARD) for his leadership in this important area of religious liberty and charitable contributions. There is nothing more important to our society than trying to strengthen the voluntary time and money commitments as an alternative, as a supplement to the efforts that government and other organizations make in their communities.

As has been pointed out, I am sure, this legislation is particularly needed to protect religious freedom in this country because of the Crystal Evangelical Free Church in Minneapolis, Minnesota, which has had a prolonged legal fight for over 6 years in an effort to prevent the church from being forced to return money which had been regularly tithed by a parishioner who subsequently filed for bankruptcy.

At the lower court, a Federal bankruptcy trustee recaptured $13,500 in past tithes from the Minnesota congregation. The church appealed the ruling and the Eighth Circuit Court vacated the decision, ruling that the Religious Freedom Restoration Act, RFRA, passed by this Congress, prevented bankruptcy trustees from voiding debtor's tithes to their church as fraudulent transfers.

Unfortunately, as a result of the Supreme Court's decision on June 25, 1997, that RFRA was unconstitutional as applied to the States. The Eighth Circuit was required to vacate its earlier decision on behalf of the church and reconsider its ruling in light of the Supreme Court.

The tragic result is that churches and charities around this country are now vulnerable to aggressive bankruptcy lawyers and other creditors while, at the same time, we are allowing people to take cruises, gamble, even call psychic hotlines, but denying them the right to exercise their faith through contributing to charities and/or other, as the gentleman from New York (Mr. NADLER) pointed out, other charities, not just religious based.

I believe that this situation is intolerable. It violates the first amendment religious clauses of the Constitution, while encouraging an outbreak of bankruptcy litigation against churches and other charities. This bill provides an excellent resolution to a serious threat to religious freedom and charities across the board.

The full text is also included in the community renewal legislation which I support along with members of the Renewal Alliance.

I once again congratulate the chairman on his leadership.

Mr. GEKAS. Mr. Speaker, I yield 2 minutes to the gentleman from Utah (Mr. CANNON), a member of the Committee on the Judiciary.

Mr. CANNON. Mr. Speaker, one of the common threads throughout the American experience is the strong yearning for religious liberty. It is what brought the Puritans to Plymouth Rock, the Mennonites to Lancaster County and the Mormons to Utah. It is part of what we are as Americans.

Protection of religious expression is a bedrock principle of the Constitution enshrined in the very first amendment to the Bill of Rights. The freedom to fully participate in religion includes the right to make offerings.

Sometimes those who make contributions will fall into financial problems and end up before the local bankruptcy court. Over the past few years bankruptcy courts with neither divine guidance nor the direction of Congress have struggled with reconciling competing interests of creditors and churches. In my view, it is inappropriate for the bankruptcy court system to force religious denominations to disgorge good-faith offerings or tithes in order to comply with rigid formulas.

S. 1244 seeks to resolve this by establishing a simple formula: Religious contributions by a debtor, if consistent with past practice or if totaling less than 15 percent of gross income, shall not be reachable by a creditor in the context of bankruptcy.

In a sense, this measure follows Christ's admonition to render therefore unto Caesar the things that are Caesar's and unto God the things which are God's. It avoids the effect of our current course that puts Federal bankruptcy court judges in the position of knocking on the doors of our churches wearing the hat of the repo man and demanding the return of tithes, offerings and other contributions.

I compliment the gentleman from California (Mr. PACKARD) and the gentleman from Pennsylvania (Mr. GEKAS) for their hard work and encourage a yes vote.

Mr. GEKAS. Mr. Speaker, I yield back the balance of my time.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from Texas, Mr. BENTSEN.

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Speaker, I rise in strong support of the bill. I appreciate the sponsors for doing this.

I had a church in Baytown, Texas, in my district which has experienced a problem with the current law. I appreciate the sponsors of the bill for correcting this situation. I hope the other body takes it up, and it is passed and signed and corrected.

Mr. BENTSEN. Mr. Speaker, I rise as a cosponsor and strong supporter of H.R. 2604, the Religious Liberty and Charitable Donation Protection Act.

This legislation provides much-needed protection to churches and other charitable organizations by preventing creditors from attempting to seize tithes and other donations made by individuals who later file for bankruptcy. Business and individuals should have the right to vigorously pursue the repayment of bad debts. But they should not have the right to reach into church offering plates and the limited budgets of charities providing invaluable services.

I know from the experience of a church in my district, the Cedar Bayou Baptist Church in Baytown, how harmful current law can be. Cedar Bayou was sued by creditors in 1995 and in September of 1997, the church was ordered to return $23,000 in tithes given by a member who later declared bankruptcy. The church has run up more than $7,000 in legal bills defending itself in court and expects the costs to rise even higher as it proceeds with an appeal of its case. Other churches across the country have incurred even higher costs, with one church in Minnesota spending $280,000 on legal fees in a case that reached the U.S. Supreme Court.

Unfortunately, the courts have ruled that tithes and donations are not protected from bankruptcy proceedings and instead are considered fraudulent transfers under current bankruptcy law. So there is an urgent need for this legislation.

This legislation provides much needed protection for houses of worship and charities. Our churches, synagogues, and charities often operate on small budgets and depend on donations for basic operations and services. They should not have to pay the price for someone else's financial problems.

In addition, this legislation also would allow debtors to make a charitable contribution of up to 15 percent under their Chapter 13 bankruptcy protection budget plans. I believe it is appropriate that we give people the peace of mind that, in the event of personal financial difficulties, they can continue to contribute to their favorite church or charity.

I urge approval of this important legislation to protect our charities and houses of worship.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of H.R. 2604, the Religious Liberty and Charitable Donation Protection Act of 1997. First of all, I am glad that we are considering this bill that I think, in some part, affects all of us. The important question that rests before us today is not simply whether our bankruptcy laws, as they stand, are effectively negating the protections for religious freedom afforded by the 1st Amendment of our Constitution, but whether this Congress will continue to be a strong defender of civil and Constitutional rights.

Although we often do so, the Constitution and the rights it extends to the citizens of this country is something that we must not take for granted. According to Judge Alphonzo Taft, father of President and Chief Justice William

Howard Taft, ''The ideal of our people as to religious freedom is absolute equality under the law of all religious opinions and sects * * * the government is neutral and while protecting all, it prefers none and disparages none.''

The right to express one's religious beliefs freely, as long as their expression does not harm others, is a fundamental part of the American experience. Those who came to this country found the early American colonies nearly four centuries ago, did so in order to escape the bitter sting of religious persecution. So it is no surprise that the first Amendment to the Constitution crafted by the descendants of these brave trailblazers was an attempt to ensure free religious expression. Although at times it is difficult to see, as Americans, we are the products of a great legacy of freedom. A legacy that we, as Members of the United States Congress, have been duly empowered to continue on the people's behalf.

However, in large part, the lasting impact of the 105th Congress, on the people that we have been elected to serve, still remains to be determined. One thing is for sure, whether we are Democrat or Republican, liberal or conservative, male or female, is the fact that the Members of this Congress have a sacred duty to be vigilant defenders of the public good. I believe that a vote of confidence, at least, for the civil libertarian spirit of H.R. 2604, the Religious Liberty and Charitable Donation Protection Act is a necessary step in the right direction. As a proponent of freedom, I can say without reservation that this bill cuts to the heart of what our Constitution and country are really all about.

However, at another level, this bill reminds us of the challenge before us to be at the forefront of the many sorely-needed reforms to our consumer and commercial bankruptcy laws. H.R. 2604, of which I am a co-sponsor, seeks to protect any religious and charitable contribution of a debtor made within one year of their filing for bankruptcy from possible recovery by a Trustee or creditor. Essentially, a Chapter 13 participant can be barred from tithing to their local church if their creditors object to the addition of this gift to their debt restructuring plan. Additionally, in Chapter 7 cases, religious contributions can be used as suitable basis to dismiss a debtor's case on the grounds that they are substantially abusing the Chapter's many favorable bankruptcy provisions. At some point, this subtle form of religious persecution must stop.

Especially at this time when several other sections of Title 11 of our Federal Code are under serious legislative review by this Congress, efforts to provide protection for the charitable and religious donations of debtors are particularly important. If any of the current legislative initiatives that encourage debtors to enter into Chapter 13 recommitment plans are passed, without first enacting these necessary protections for the religious contributions of debtors, then this growing deficiency in our bankruptcy laws will surely be exacerbated. For all of these reasons, I urge all of my colleagues to please support H.R. 2604.

Mr. NADLER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEASE). The question is on the motion offered by the gentleman from Pennsylvania (Mr. GEKAS) that the House suspend the rules and pass the bill, H.R. 2604, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. GEKAS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1244) to amend title 11, United States Code, to protect certain charitable contributions, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Religious Liberty and Charitable Donation Protection Act of 1998''.

SEC. 2. DEFINITIONS.

Section 548(d) of title 11, United States Code, is amended by adding at the end the following:

''(3) In this section, the term 'charitable contribution' means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—

''(A) is made by a natural person; and

''(B) consists of—

''(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

''(ii) cash.

''(4) In this section, the term 'qualified religious or charitable entity or organization' means—

''(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

''(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.''.

SEC. 3. TREATMENT OF PRE-PETITION QUALIFIED CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Section 548(a) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by striking ''(1) made'' and inserting ''(A) made'';

(3) by striking ''(2)(A)'' and inserting ''(B)(i);

(4) by striking ''(B)(i)'' and inserting ''(ii)(I)'';

(5) by striking ''(ii) was'' and inserting ''(II) was'';

(6) by striking ''(iii)'' and inserting ''(III)''; and

(7) by adding at the end the following:

''(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

''(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

''(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.''.

(b) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS.—Section 544(b) of title 11, United States Code, is amended—

(1) by striking ''(b) The trustee'' and inserting ''(b)(1) Except as provided in paragraph (2), the trustee''; and

(2) by adding at the end the following:

''(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.''.

(c) CONFORMING AMENDMENTS.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (e)—

(A) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(B) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)'';

(2) in subsection (f)—

(A) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''; and

(B) by striking ''548(a)(1)'' and inserting ''548(a)(1)(A)''; and

(3) in subsection (g)—

(A) by striking ''section 548(a)(1)'' each place it appears and inserting ''section 548(a)(1)(A)''; and

(B) by striking ''548(a)(2)'' and inserting ''548(a)(1)(B)''.

SEC. 4. TREATMENT OF POST-PETITION CHARITABLE CONTRIBUTIONS.

(a) CONFIRMATION OF PLAN.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting before the semicolon the following: '', including charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made''.

(b) DISMISSAL.—Section 707(b) of title 11, United States Code, is amended by adding at the end the following: ''In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).''.

SEC. 5. APPLICABILITY.

This Act and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act.

SEC. 6. RULE OF CONSTRUCTION.

Nothing in the amendments made by this Act is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 2604) was laid on the table.

TICKET TO WORK AND SELF-SUFFICIENCY ACT OF 1998

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 450 and ask for its immediate consideration.