

NATIONAL BANKRUPTCY CONFERENCE

A Voluntary Organization Composed of Persons Interested in the
Improvement of the Bankruptcy Code and Its Administration

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February 6, 2026

Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Honorable Dick Durbin
Ranking Member
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

Honorable Jim Jordan
Chairman
Committee on the Judiciary
House of Representatives
2056 Rayburn House Office Building
Washington, DC 20515

Honorable Jamie Raskin
Ranking Member
Committee on the Judiciary
House of Representatives
2242 Rayburn Office Building
Washington DC 20515

Re: Amending the Bankruptcy Code to Reverse the Result of *Bartenwerfer. Bartenwerfer v. Buckley*, 598 U.S. 69 (2023)

Dear Sen. Grassley, Sen. Durbin, Rep. Jordan, and Rep. Raskin:

I am writing in my capacity as chair of the National Bankruptcy Conference, a small, non-partisan, self-funded group of sixty lawyers, academics, and judges committed to bankruptcy reform. The NBC first came together at the urging of Congress in the 1930s when it wanted to understand the consensus views of experts who brought a wide range of perspectives to bear on bankruptcy. The NBC has met regularly and has been committed to bankruptcy reform ever since. The NBC played an instrumental role in the 1938 Chandler Act and every major piece of bankruptcy legislation since then.

The Bankruptcy Code excepts some debts from discharge. Looming large among these are debts that arise from bad or reprehensible conduct. Nondischargeability for debts arising from these bad acts, however, is ordinarily limited to liabilities that arise out of bad acts that the debtors themselves commit. For example, nondischargeability under §523(a)(2)(B) is limited to debts incurred by material misstatements in writing published by the debtor with the intent to deceive. Similarly, nondischargeability under §523(a)(6) is limited to liability for willful and malicious injury by the debtor. Nondischargeability under §523(a)(9) is limited to liability for death or personal injury caused by the debtor's operation of a vehicle, aircraft, or vessel. Debtors might be vicariously liable under applicable nonbankruptcy law for these debts that arise out of bad acts committed by others, but debtors are still able to discharge such debts as long as they are not the ones who committed the bad acts.

A different rule, however, applies in the case of some (but not all) debts incurred by fraud. For example, §523(a)(2) provides that a “discharge . . . does not discharge an individual

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debtor from any debt . . . for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." This section does not expressly require that the debt that arises from the fraud be committed by the debtor for the debt to be nondischargeable.

This issue surfaced in a recent case before the Supreme Court. *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023), involved a couple who were jointly liable to a buyer of a house that they had bought, remodeled, and flipped. Both were liable on the debt under nonbankruptcy law, but only one of the two spouses was involved or even knew about the fraud. The creditor, of course, had claims against both in their bankruptcies, and the debt owed by the individual who committed the fraud was nondischargeable. But the Court found that the debt owed by the innocent spouse who did not commit the fraud was also nondischargeable. By the language of the statute, the Court determined that it made no difference that the other spouse lacked actual knowledge of the fraud or any reason to know of it. Section 523(a)(4) might raise a similar problem for debtor arising from fraud while acting in a fiduciary capacity.

The NBC believes it is sound bankruptcy policy to provide honest debtors with a fresh start when they themselves have not behaved badly. A debt that arises out of someone else's dishonest actions is different from a debt that arises out of a bad act that the debtor committed or facilitated. Bankruptcy law has long extended the fresh start to honest, but unfortunate debtors. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). Allowing such debts to be discharged is consistent with the policy undergirding the fresh start for honest debtors. Changing the Bankruptcy Code to reflect this conception of the fresh start would require only a straightforward amendment of §523(a):

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

...

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by **the debtor's**—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

...

(4) for **the debtor's** fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

As always, we would be happy to discuss this proposal or any other issue of bankruptcy with you.

Sincerely,

Douglas G. Baird