raised his hands towards the sky to God to start his prayer, he was shot and killed from behind.

''He was shot and killed from behind, without a single word of prayer being spoken from his lips. They also killed my Grandmother.

''The four children, one of them being Nerses, were hiding. When this occurred, they fled out and joined the crowd in the street running away as fast as they could. All four children ranged anywhere from 10 to 16 years old. During this time, my father, Nerses, caught a severe cold since he was out in the cold for 20 to 25 days. Orumich is cold, especially during the time of this occurrence. However, my father was soon taken in and cared for by the Presbyterian Church in Iran, where he was cared for for a few years.

''Sadly, he was still not feeling well, and soon developed a kidney malfunction. In 1929, regardless of his fragile state, he married Sophia, the love of his life in Masjed Suleiman, which is a city located in the southwest region of Iran.

''My father passed away at the young age of 38, when I was only two years old. He left behind his written testimony—his terrifying and heartbreaking memories of the Armenian Genocide. This is why I can share all this with you today.''

CONFERENCE REPORT ON H.R. 4173, DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

SPEECH OF

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 30, 2010

Mr. CONYERS. Mr. Speaker, as the Chairman of the House Judiciary Committee, and a House conferee on the Dodd-Frank Wall Street Reform and Consumer Protection Act, I would like to highlight a few provisions of this legislation of particular jurisdictional importance to our Committee, and that our Committee was instrumentally involved in shaping. During the course of Congress's consideration of this legislation, our Committee carefully examined a range of legal issues posed, including issues of antitrust law, bankruptcy law, criminal law, administrative procedure, and judicial proceedings, and held two days of hearings last fall focusing on antitrust and bankruptcy law in particular. Below is a summary of some of the more significant of these issues and how they have been addressed.

ANTITRUST LAW

One major impetus of this bill is to address the problem posed two years ago by financial institutions that were deemed ''too big to fail.'' The emergency efforts to deal with those institutions led to infusions of billions of federal dollars, and federal guarantees of billions more, putting the Treasury, and our nation, at significant risk.

But ''too big'' also places our nation at significant risk in another respect—and that is the risk of harm to competition, when a marketplace becomes concentrated in the hands of so few competitors that consumers no longer have meaningful choice, and the healthy influence of competition on price, quality, and innovation is lost.

It is therefore essential that the antitrust laws, the laws protecting our economic freedoms against monopolization, anticompetitive restraints of trade, and undue market concentration, remain in place. They are needed to ensure that the heightened regulatory supervision the new law contemplates, as well as our response to any future financial system emergency, do not inadvertently lead to an even more concentrated marketplace—with companies that are even bigger, with more market power, and with less incentive to be responsive to the consumers they are supposed to serve, and leaving less opportunity for new entry and innovation.

The final bill contains a number of provisions to ensure that the antitrust laws remain fully in effect.

ANTITRUST SAVINGS CLAUSE

First and foremost is the antitrust savings clause in section 6 of the bill. It is the standard antitrust savings clause found in other statutes. It applies to the entire Act, and all amendments made by the Act to other laws. The phrase ''unless otherwise specified'' is added in reference to four provisions in the bill. In two places—sections 210(a)(1)(G)(ii)(III) and 210(h)(11) of the bill—the standard pre-merger waiting period under section 7A of the Clayton Act is explicitly shortened. And in two other places—section 163(b)(5) of the bill, and the amendment to section 4(k)(6)11(B) of the Bank Holding Company Act made in section 604(e)(2) of the bill—there are cross-references to the exception to pre-merger review in section 7A(c)(8) of the Clayton Act that explicitly make that exception inapplicable.

The phrase ''unless otherwise specified'' refers only to those four specific provisions that explicitly modify the operation of those specified provisions of the antitrust laws in specified ways, and is not a basis for courts to consider whether any other provision in the bill might be intended as an implicit modification of how the antitrust laws operate. The savings clause is intended to make clear that it is not.

For example, in a number of places in the bill, there are provisions referring to ''Antitrust Considerations'' that various securities and commodities entities—including derivatives clearing organizations, swap dealers, major swap participants, swap execution facilities, clearing agencies, security-based swap dealers, and major security-based swap participants—are directed to take into account in formulating their operating rules. There are exceptions to these directives for situations in which the entity believes pursuing them itself is inconsistent with its other obligations under the relevant securities or commodities law. The fact that the entity is excused from the new directives, however, does not alter the application of the antitrust laws. Nor does the fact that the entity follows these directives in its own rulemaking supplant the operation of the antitrust laws.

In this regard, the rule of construction found in section 541 of the bill simply reaffirms, perhaps unnecessarily, for Title V of the bill what the antitrust savings clause already provides for the entire bill and all amendments made by it. In attempting to elaborate on the effect of an antitrust savings clause, it does not create a different rule, but merely reaffirms the general rule.

Moreover, an antitrust savings clause is itself merely a reinforcement of the well-established principle that, because the antitrust laws are ''a comprehensive charter of economic liberty aimed at preserving free and unfettered competition,'' *Northern Pac. Ry. Co.* v. *U.S.,* 356 U.S. 1 (1958), ''the Magna Carta of free enterprise,'' *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP,* 540 U.S. 398 (2004); *United States* v. *Topco Associates, Inc.,* 405 U.S. 596, 610 (1972), there is a strong presumption against their normal operation being superseded by some other statutory scheme. E.g., *Ricci* v. *Chicago Mercantile Exchange,* 409 U.S. 289, 302–303 (1973); *Silver* v. *New York Exchange,* 373 U.S. 341, 357 (1963). Whether the antitrust laws reach particular conduct depends on whether the other statutory scheme is ''incompatible with the maintenance of an antitrust action.'' *Ricci,* 409 U.S. at 302; *Silver,* 373 U.S. at 358. The antitrust laws are superseded only ''where there is a plain repugnancy between the antitrust and regulatory provisions.'' *Credit Suisse Securities (USA) LLC* v. *Billing,* 551 U.S. 264, 272 (2007); *Gordon* v. *New York Stock Exchange, Inc.,* 422 U.S. 659, 682 (1975). The antitrust laws are displaced ''only if necessary to make the [other statutory scheme] work, and even then only to the minimum extent necessary.'' *Ricci,* 409 U.S. at 301; *Silver,* 373 U.S. at 357.

PRE-MERGER ANTITRUST REVIEW

Recognizing that a fully methodical pre-merger antitrust review may be in tension with the need for quick action to avoid systemic harm, the bill shortens the ''Hart-Scott-Rodino'' pre-merger waiting periods under section 7A of the Clayton Act, based on the procedure developed for reviewing sales of assets during a bankruptcy proceeding. This procedure expedites the initial review, while permitting the antitrust enforcement agency to extend the period when more information is needed to make its assessment. This expedited procedure is included in two places—in section 210(a)(1)(G)(ii) of the bill, for mergers of a covered financial company in receivership with another company, and in section 210(h)(11) of the bill, for mergers or sales of bridge financial companies.

The House bill had included, at the request of our Committee, a provision permitting the FDIC receiver to effectuate a merger immediately, without prior notice to the Attorney General or any pre-merger waiting period, if the Treasury Secretary determined that immediate action was necessary to preserve financial stability. This provision was not included in the Senate bill or the conference report. While express authority to act immediately is therefore missing, the Judiciary Committee hopes the antitrust enforcement agencies will work constructively with the Treasury Department to develop a mechanism for dispensing with the prior notice requirement and the pre-merger waiting period, or shortening them appropriately, when warranted by urgency and the danger posed to stability of the economy, keeping in mind that the antitrust laws authorizing challenge of anticompetitive mergers and acquisitions remain fully in force.

In this regard, it should be emphasized that the shortening of the H–S–R pre-merger antitrust waiting period, and even the possibility of permitting a merger to be effectuated as close to immediately as can be arranged, in no way alters the applicability of the other antitrust laws. If a merger raises significant competitive concerns, it can still be challenged after the fact under section 7 of the Clayton Act. And post-merger conduct that raises competitive concerns is fully subject to the Sherman Act. These laws are not amended by the bill; and

the antitrust further emphasizes that their operation is not affected in any way.

Similarly, the House bill had, at the request of our Committee, applied the expedited premerger review process not only to mergers, but to sales or transfers of financial company assets. While transfers within the financial company's own internal corporate structure, or to a temporary bridge company set up by the FDIC, would never trigger the H–S–R notification and waiting period, and even sales or transfers to outside third parties would trigger it only if the assets acquired exceeded $63 million in value, an acquisition of this type is as likely, if not more so, than a merger with the entire financial company. Our Committee thought it important that acquisitions of this type, when they occur, have the expedited process available, as well as the emergency process allowing acquisitions to be effectuated immediately.

The Senate bill limited the application of the expedited process to mergers, however, and the Senate approach was retained in the final conference report, which limits availability of the expedited review to mergers described in section 210(a)(1)(G)(i)(I), leaving out transfers of assets described in section 210(a)(1)(G)(i)(II). To the extent that subparagraph (G)(i)(II) may be read not only to cover transfers within the corporate structure or to the temporary bridge financial company, but also to include transfers to third parties, these transfers, to the extent they are at thresholds that trigger Hart-Scott-Rodino reporting, will not be able to take advantage of the expedited waiting period under section 210(a)(1)(G)(ii). Our Committee urges the antitrust enforcement agencies to use their existing authority to work constructively with the FDIC to establish an informal arrangement to enable these transactions to proceed in an expedited fashion where consistent with effective antitrust enforcement, keeping in mind, again, that the antitrust laws authorizing challenge of anticompetitive mergers and acquisitions remain fully in force.

BANKRUPTCY LAW

One of the bill's centerpieces is a new emergency procedure for placing a financial institution into FDIC receivership when its insolvency poses imminent and significant ''systemic risk'' to the stability of the broader financial system and economy. Congress made a judgment to craft this procedure outside the Bankruptcy Code, rather than seek to adopt the Code to the additional needs of dealing effectively with systemic risk. While generally supportive of this judgment, our Committee has urged proceeding in keeping with two important objectives. First, that this new emergency procedure be authorized only for cases of genuine emergency, where a departure from the well-established procedures in the Bankruptcy Code is essential to broader financial and economic stability. And second, that even in the new emergency procedure, the well-developed bankruptcy principles of due process and equitable treatment of all affected parties be incorporated to the fullest extent possible.

CONFINING THE EXTRAORDINARY RECEIVERSHIP PROCEDURE TO EXTRAORDINARY CIRCUMSTANCES

As to the first objective, the House bill reaffirmed, at our Committee's request, the ''strong presumption that resolution under the bankruptcy laws will remain the primary method of resolving financial companies,'' and that the new FDIC receivership authority ''will only be used in the most exigent circumstances.'' The substantive essence of this presumption is reflected in several places in the final bill's new liquidation provisions.

In particular, section 203(a)(2)(F) requires that, in any recommendation to the Treasury Secretary that FDIC receivership be invoked, the FDIC and the Fed explain why a case under the Bankruptcy Code is not appropriate. Section 203(b)(4) requires that the Secretary have determined, in consultation with the President, that ''any effect on the claims or interests of creditors . . . and other market participants . . . is appropriate, given the impact . . . on financial stability in the United States.'' And section 203(c)(2) requires the Secretary to make an immediate report to Congress, within 24 hours, on specified considerations supporting the FDIC receivership invocation, including, in subparagraphs (E)–(I), several considerations regarding the effects of FDIC receivership as compared with bankruptcy procedure.

In addition, section 165(d)(4)(b) specifies that the resolution plans that large financial holding companies and nonbank financial companies will be required to submit to the Fed, as part of enhanced prudential standards, must be sufficient to result in orderly resolution under the Bankruptcy Code in the event of insolvency. Established bankruptcy procedure is thus reaffirmed as the preferred route even in the planning stages.

Our Committee expects these provisions to be cornerstones for ensuring that this extraordinary procedure will be invoked only when essential—when bankruptcy procedure is clearly not sufficient in light of the extreme urgency and overriding systemic risk.

INCORPORATING KEY BANKRUPTCY PRINCIPLES IN THE FDIC RECEIVERSHIP PROCESS

As to the second objective, the bill incorporates a number of key bankruptcy protections, first and foremost among them preservation and priority for specified kinds of claims against the financial company, and powers for the FDIC receiver to avoid transfers for the benefit of the United States and other creditors. The bill also incorporates a number of terms directly from the Bankruptcy Code. While we were not always successful in explicitly incorporating every useful Bankruptcy Code concept, many of the most important due process and equitable treatment considerations are reflected in some fashion.

For example, section 208 of the bill requires dismissal of a covered financial company's pending bankruptcy case upon appointment of the FDIC receiver. Subsection (b) provides that any assets that have vested in another entity automatically vest back in the covered financial company. We had expressed concern that this would prove not only unworkable in practice, but could undermine the effectiveness of the bankruptcy proceeding in preserving assets of the financial company, by creating uncertainty regarding any purchase of assets even in the ordinary course of business. Subsection (c) of the final bill clarifies that any order entered or other relief granted by a bankruptcy court prior to the date the FDIC receiver is appointed ''shall continue with the same validity as if an orderly liquidation had not been commenced.'' Our Committee expects subsection (c) to be construed so that payments made during the ordinary course of the financial company's business while it is a debtor in a bankruptcy case will not be subject to the automatic re-vesting. This is in keeping with other provisions of the bill, such as section 165, that are intended to encourage financial companies to be resolved through bankruptcy wherever possible.

At our Committee's urging, section 210(b) of the bill establishes priority of payment for various types of unsecured claims against a covered financial company for which the FDIC has been appointed as receiver under section 202, modeled on similar protection in the Bankruptcy Code. Subsection (b)(1)(C) accords third priority—after payment of the FDIC's administrative expenses as receiver, and any amounts owed to the United States (unless otherwise agreed to)—to employees with claims for unpaid wages, salaries, or commissions (including earned vacation, severance, and sick leave pay) up to a maximum $11,725 for each employee, earned within 180 days before the date of the FDIC's appointment as receiver. Also at the Committee's urging, subsection (b)(1)(D) accords fourth priority for certain contributions owed to employee benefit plans arising from services rendered within the same 180-day time frame. These provisions will ensure that American workers will be accorded the equivalent protections they have under current bankruptcy law with respect to payment priority for unpaid wages and employee benefit plan contributions.

At our Committee's urging, the House bill required the FDIC receiver to appoint a Consumer Privacy Advisor to assist with ensuring that the privacy of sensitive consumer information would be appropriately protected. A similar provision was added to the Bankruptcy Code in 2005, following revelations that Toysmart.com, an Internet retailer of educational toys had, after filing for bankruptcy, sought to sell its customer data base, including personal information about children who used its toys, despite its promise never to sell this information. This provision was not retained in the final bill; but the FDIC has advised our Committee that it is absolutely committed to safeguarding any personally identifiable information it acquires from a covered financial company for which it serves as receiver.

PRACTICE OF LAW

The Constitutional freedoms and legal rights we enjoy as Americans are ultimately protected in our courts, through the advocacy of attorneys who are licensed to practice before them. In keeping with these critical responsibilities, the activities of these ''officers of the court'' are regulated by the States, through government bodies overseen by the State's highest court, with specialized expertise in the sometimes complex duties imposed by the code of legal ethics. Among the myriad activities engaged in as part of the practice of law are activities to assist consumer clients in resolving serious debt problems, including but by no means limited to representing them in bankruptcy proceedings.

Conceptually, the activities Congress intends to give the Bureau authority to regulate—''the offering or provision of a financial product or service''—are distinguishable from the practice of law. But because of the breadth of the authority being given the Bureau, including the definitions of ''covered person'' and ''financial product or service,'' and the complexities of the practice of law, there was concern about potential overlap. And giving the new Bureau authority to regulate the

practice of law could materially interfere with and jeopardize sensitive aspects of the attorney-client relationship, including the attorney-client privilege and work product protection that enable clients to obtain sound legal advice from their attorneys on a protected confidential basis.

It could also undermine the authority of the State supreme courts to effectively oversee and discipline lawyers. There are carefully developed ethical codes and disciplinary rules governing all aspects of the practice of law. Any regulation from a new source would unavoidably conflict with the existing rules and lines of accountability. And because one of the foremost, and at times most complex, ethical obligations is for an attorney to represent the client zealously within the bounds of the law, there would be a significant likelihood of attorneys being impeded in meeting their obligations to their clients and to the legal system they are sworn to protect.

Even if the Bureau's authority could be reliably confined to legal representation in financial matters, the result would be material harm to consumer clients of bankruptcy lawyers, consumer lawyers, and real estate lawyers—the very consumers the Bureau is being created to protect. But the harm would inevitably be far broader, extending into unrelated aspects of legal practice.

For those reasons, our Committee was determined to avoid any possible overlap between the Bureau's authority and the practice of law. At the same time, our Committee recognized that attorneys can be involved in activities outside the practice of law, and might even hold out their law license as a sort of badge of trustworthiness. Although State supreme courts would have some authority to respond to abuses in even these outside activities, as reflecting on the attorney's unfitness to hold a law license (see Model Rule 8.4 of the American Bar Association Model Rules of Professional Conduct, adopted in virtually all States), their disciplinary authority is not necessarily as extensive in these outside areas. The Committee was equally determined that these outside activities not escape effective regulation simply because the person engaging in them is an attorney or is working for an attorney. Congresswoman MAXINE WATERS, a senior Member of both our Committee and the Committee on Financial Services, and a House conferee, was instrumental in helping ensure that the final bill draws this distinction appropriately and clearly.

Accordingly, our Committee worked to make clear that the new Consumer Financial Protection Bureau established in the bill is not being given authority to regulate the practice of law, which is regulated by the State or States in which the attorney in question is licensed to practice. At the same time, the Committee worked to clarify that this protection for the practice of law is not intended to preclude the new Bureau from regulating other conduct engaged in by individuals who happen to be attorneys or to be acting under their direction, if the conduct is not part of the practice of law or incidental to the practice of law.

Section 1027(e) of the final bill incorporates this protection. It excludes from Bureau supervisory and enforcement authority all activities engaged in as part of the practice of law under the laws of a State in which the attorney in question is licensed to practice law. To the extent that a paralegal, secretary, investigator, or law student intern is performing activities under the supervision of an attorney, and in a manner recognized under the laws of the relevant State as within the scope of the attorney's practice of law—and only to that extent—those activities also fall within this protection. As the commentary to Model Rule 5.3 of the American Bar Association Model Rules of Professional Conduct, adopted in virtually all States, makes clear, these legal assistants ''act for the lawyer in rendition of the lawyer's professional services . . . [and the] lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment . . . .'' Extending the protection to cover these legal assistance, under these conditions, is consistent with ensuring that the protection fully covers the practice of law as it is conventionally engaged in, while foreclosing any opportunity for an attorney to shield other commercial activities by engaging in them through surrogates.

The provision in the final bill includes indicia for determining whether an activity that constitutes the offering or provision of a financial product or service within the terms of the bill is part of or incidental to the practice of law, and therefore excluded from the Bureau's authority. First and foremost, the activity must be among those activities considered part of the practice of law by the State supreme court or other governing body that is regulating the practice of law in the State in question, or be incidental to those practices. As further protection against abuse, the activity must be engaged in exclusively within the scope of the attorney-client relationship; and the product or service must not be offered by or under direction of the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with it.

We would hope that this carefully considered statutory provision will also serve as a model for other federal agencies considering new regulations that might cover conduct engaged in by attorneys as well as others, so as to better ensure that important consumer protection objectives are achieved consistent with safeguarding the ability of our ''officers of the court'' to fulfill their ethical obligations under our legal system.

It is generally contemplated that the new Bureau will make rules regarding various aspects of its authority. Any determinations by rule, or otherwise, regarding what activities constitute the practice of law should be consistent with the views and practices of the State supreme court or State bar in question as to what activities it regards as part of the practice of law and oversees on that basis, giving appropriate deference to comments received from the State supreme courts and State bars, supplemented with further guidance as appropriate from the other indicia set forth in section 1027(e)(2).

Section 1027(e)(3) makes clear that existing federal regulatory authority over activities of attorneys, either under enumerated consumer laws as defined in the bill, or transferred to the new Bureau from existing agencies under subtitle F or H of Title X, the Consumer Financial Protection Bureau title, is not diminished.

ADMINISTRATIVE AND JUDICIAL PROCESS

Throughout the bill are provisions authorizing administrative or judicial enforcement. Our Committee has endeavored, where possible, to have these provisions written in conformance with the standard modern formulations found in the Administrative Procedures Act and title 28 of the United States Code, in lieu of novel formulations, or formulations modeled on laws enacted in a bygone era, that have the potential to create unnecessary uncertainty and litigation over interpretation. We were not always entirely successful in this regard.

Among the changes made at our Committee's urging was revision of the Consumer Financial Protection Bureau's new investigative authority to bring it closer into conformity with the Antitrust Civil Process Act, on which it is modeled; and revisions to the new authority for nationwide service of subpoenas by the Securities and Exchange Commission to ensure that the authority will be exercised consistent with due process.

Our Committee remains concerned about the use of the terms ''privileged'' or ''privileged as an evidentiary matter'' to mean confidential and protected from discovery. This inartful phraseology, which was removed from some parts of the bill but not others, could unintentionally raise questions regarding evidentiary privilege law, which under the Rules Enabling Act is left to State common law. In particular, the Committee wishes to emphasize that this bill in no way authorizes government officials or courts to demand that anyone furnish information that is protected by legal privilege.

STORIES OF ARMENIAN GENOCIDE

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 2010

Mr. SCHIFF. Madam Speaker, I rise today to memorialize and record a courageous story of survival of the Armenian Genocide. The Armenian Genocide, perpetrated by the Ottoman Empire from 1915 to 1923, resulted in the death of 1.5 million Armenian men, women, and children. As the U.S. Ambassador to the Ottoman Empire, Henry Morgenthau documented at the time, it was a campaign of ''race extermination.''

The campaign to annihilate the Armenian people failed, as illustrated by the proud Armenian nation and prosperous diaspora. It is difficult if not impossible to find an Armenian family not touched by the genocide, and while there are some survivors still with us, it is imperative that we record their stories. Through the Armenian Genocide Congressional Record Project, I hope to document the harrowing stories of the survivors in an effort to preserve their accounts and to help educate the Members of Congress now and in the future of the necessity of recognizing the Armenian Genocide.

Below is one of those stories:

SUBMITTED BY KATIA KUSHERIAN, WHOSE MOTHER IS 95 YEARS OLD AND ALSO CONTRIBUTED BY PROVIDING DETAILS INCLUDED IN THE FOLLOWING STORIES

''Here are some of the many stories I have heard from my parents.

''My first story: In 1915, my father's parents were killed, and my father, Hovannes, became an orphan. My father was from Tigranakert. A Turkish woman adopted him and he lived in that family. He had to go to the fields every morning to work. His stepmother's older son rode a horse and my father always had to run to keep up with the