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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MILAVETZ, GALLOP & MILAVETZ, P. A., ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 08–1119. Argued December 1, 2009—Decided March 8, 2010*

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) amended the Bankruptcy Code to define a class of bankruptcy professionals termed "debt relief agenc[ies]." 11 U. S. C. §101(12A). That class includes, with limited exceptions, "any person who provides any bankruptcy assistance to an assisted person . . . for . . . payment . . . , or who is a bankruptcy petition preparer." *Ibid.* The BAPCPA prohibits such professionals from "advis[ing] an assisted person . . . to incur more debt in contemplation of [filing for bankruptcy] . . . ." §526(a)(4). It also requires them to disclose in their advertisements for certain services that the services are with respect to or may involve bankruptcy relief, §§528(a)(3), (b)(2)(A), and to identify themselves as debt relief agencies, §§528(a)(4), (b)(2)(B).

The plaintiffs in this litigation—a law firm and others (collectively Milavetz)—filed a preenforcement suit seeking declaratory relief, arguing that Milavetz is not bound by the BAPCPA's debt-relief-agency provisions and therefore can freely advise clients to incur additional debt and need not make the requisite disclosures in its advertisements. The District Court found that "debt relief agency" does not include attorneys and that §§526 and 528 are unconstitutional as applied to that class of professionals. The Eighth Circuit affirmed in part and reversed in part, rejecting the District Court's conclusion that attorneys are not "debt relief agenc[ies]"; upholding application of §528's disclosure requirements to attorneys; and finding §526(a)(4) unconstitutional because it broadly prohibits debt relief agencies

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*Together with No. 08–1225, *United States* v. *Milavetz, Gallop & Milavetz, P. A., et al.,* also on certiorari to the same court.

from advising assisted persons to incur *any* additional debt in contemplation of bankruptcy even when the advice constitutes prudent prebankruptcy planning.

Held:

1. Attorneys who provide bankruptcy assistance to assisted persons are debt relief agencies under the BAPCPA. By definition, "bankruptcy assistance" includes several services commonly performed by attorneys, *e.g.,* providing "advice, counsel, [or] document preparation," §101(4A). Moreover, in enumerating specific exceptions to the debt-relief-agency definition, Congress indicated no intent to exclude attorneys. See §§101(12A)(A)–(E). Milavetz relies on the fact that §101(12A) does not expressly include attorneys in advocating a narrower understanding. On that reading, only a bankruptcy petition preparer would qualify—an implausibility given that a "debt relief agency" is "any person who provides any bankruptcy assistance . . . or who is a bankruptcy petition preparer," *ibid.* Milavetz's other arguments for excluding attorneys are also unpersuasive. Pp. 5–9.

2. Section 526(a)(4) prohibits a debt relief agency only from advising a debtor to incur more debt because the debtor is filing for bankruptcy, rather than for a valid purpose. The statute's language, together with its purpose, makes a narrow reading of §526(a)(4) the natural one. *Conrad, Rubin & Lesser* v. *Pender*, 289 U. S. 472, supports this conclusion. The Court in that case read now-repealed §96(d), which authorized reexamination of a debtor's attorney's fees payment "in contemplation of the filing of a petition," to require that the portended bankruptcy have "induce[d]" the transfer at issue, *id.,* at 477, understanding inducement to engender suspicion of abuse. The Court identified the "controlling question" as "whether the thought of bankruptcy was the impelling cause of the transaction," *ibid.* Given the substantial similarities between §§96(d) and 526(a)(4), the controlling question under the latter is likewise whether the impelling reason for "advis[ing] an assisted person . . . to incur more debt" was the prospect of filing for bankruptcy. In practice, advice impelled by the prospect of filing will generally consist of advice to "load up" on debt with the expectation of obtaining its discharge. The statutory context supports the conclusion that §526(a)(4)'s prohibition primarily targets this type of conduct. The Court rejects Milavetz's arguments for a more expansive view of §526(a)(4) and its claim that the provision, narrowly construed, is impermissibly vague. Pp. 9–18.

3. Section 528's disclosure requirements are valid as applied to Milavetz. Consistent with Milavetz's characterization, the Court presumes that this is an as-applied challenge. Because §528 is directed at misleading commercial speech and imposes only a disclosure re-

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quirement rather than an affirmative limitation on speech, the less exacting scrutiny set out in *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, governs. There, the Court found that, while unjustified or unduly burdensome disclosure requirements offend the First Amendment, "an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Id.,* at 651. Section 528's requirements share the essential features of the rule challenged in *Zauderer*. The disclosures are intended to combat the problem of inherently misleading commercial advertisements, and they entail only an accurate statement of the advertiser's legal status and the character of the assistance provided. Moreover, they do not prevent debt relief agencies from conveying any additional information through their advertisements. *In re R. M. J.*, 455 U. S. 191, distinguished. Because §528's requirements are "reasonably related" to the Government's interest in preventing consumer deception, the Court upholds those provisions as applied to Milavetz. Pp. 18–23.

541 F. 3d 785, affirmed in part, reversed in part, and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined, in which SCALIA, J., joined except for n. 3, and in which THOMAS, J., joined except for Part III–C. SCALIA, J., and THOMAS, J., filed opinions concurring in part and concurring in the judgment.