



## Taxpayer and International Debt Crisis Protection Act

### Revised Memo of Support

May 30, 2023

The New York Taxpayer and International Debt Crises Protection Act ([A2970/S4747](#)) must be adopted by the New York State legislature to alleviate the crushing debt of sovereign countries. In offering this memo of support, it's important to the Council that the public and the legislators they elect understand that there are **three** bills which offer debt relief to foreign countries and not just one. The merits and limitations of these bills must be **publicly and openly discussed** so that legislators can determine if a compromise is feasible and find the optimum path forward to the best debt relief possible. Towards this goal, New York State Council of Churches offers this analysis of the three bills to address the international debt crisis. 1) The Model Law 2) The New York Taxpayer and International Debt Crises Protection Act and 3) Champerty to further the public conversation.

### Champerty

The Champerty bill ([S5623/A5290](#)) by Jessica González-Rojas in the Assembly and Finance Committee Chairwoman Liz Krueger (D) in the state Senate, would repeal a 2004 state law that eliminated the Champerty doctrine for transactions over \$500,000.

According to Rojas in The Hill, "The champerty doctrine is really old English law language that essentially prohibits the purchase of securities or other financial instruments for the sole purpose of litigation,' The Champerty defense, say the bill's promoters, would prevent hedge funds from buying distressed debt at a discount with the purpose of clogging up restructuring talks to make a profit. In 2004, New York passed a champerty exception for operations larger than \$500,000. When the state passed the 2004 exception, legislators reasoned that debtors overused the champerty defense, creating a glut of legislation and harming the bond market overall. Markets have developed for the purchase and sale of claims, including claims that are in default. The ability to collect on these claims without fear of champerty litigation, is essential to the fluidity of commerce in New York,' wrote the 2004 bill's promoters in a memo supporting the legislation."

But now things are different. The weakness of the Champerty law, as written, is that vulture funds are using the loop hole to buy up debt valued **over** \$500,000 for pennies on the dollar and then turning around and suing countries for the full face-value of the debt. There is no way under the exception of the 2004 law to stop them unless their investment is under \$500,000. For

complete commentary on Champerty see the [editorial](#) on May 9 by Senator Liz Krueger in the Times Union.

## The Other Two Bills

The Champerty bill is distinct from but complements **two other** bills which deal with the rules of how a private creditor can treat a sovereign country which is in debt. These two bills work from a shared reality: countries **already** get debt relief from **public entities** like the International Monetary Fund and the United States but the public benefit is zeroed out by private creditors. When a country is in distress, these public entities often wisely discount the country's debt by 20% to 50% or even more. Public entities discount debt so that countries have a reasonable chance of repaying it without defaulting. Moreover, debt forgiveness means releasing the savings to invest in health care, jobs, environmental protections, food production and infrastructure which eases human pain and, in the long run, puts the country in a stronger financial position making it even less reliant on debt in the future. Easing the burden on countries also limits the necessity of a country's citizens to migrate to other countries (like the United States or Europe) because their economic prospects improve to stay in their own country. **But here is the problem: The money saved from the public finance discount, is not used for investment in the country but to pay private creditors which have not discounted their debt. Some of these private creditors are vulture funds which often purchase the remaining private debt for pennies on the dollar and then have the audacity to sue the country for not paying the full market value of the loan. Under this scheme, tax payers end up paying more to countries struggling to pay their private debt with their discounted public debt savings intended to help improve a country's economy. Tax payers end up footing the bill for predatory private creditors peeling off the savings from public entity discounts.**

To deal with the problem of managing private debt there are two approaches: The Model Law and The New York Taxpayer and International Debt Crises Protection Act

## An Act to Amend the Banking Law, in Relation to Restructuring Unsustainable and Sovereign and Subnational Debt (The Model Law)

Under the Model Law ([A2102/S5542](#)) supported by Gustav Rivera in the Senate and Maritza Davila in the Assembly, a majority of private creditors would have to come up with a deal by which they discount a country's private debt. Under this scheme, if more than 50% of the **private** creditors come up with a deal to discount the debt by say 5%, then the remaining private creditors **have to abide by the same terms**. This system is an improvement over the current situation where private creditors can exploit countries unchecked **BUT** the Model Law **weakly relies** on the voluntary efforts of reputable private creditors to persuade bad actor private creditors, like vulture funds, to conform to the deal they come up with.

## The New York Taxpayer and International Debt Crises Protection Act

The New York Taxpayer and International Debt Crises Protection Act ([A2970/S4747](#)) sponsored by Pat Fahy of the Assembly and Brad Hoylman-Sigal of the Senate takes a different approach than The Model Law to dealing with the problem of private debt.

Under the Tax Payer Act, if a public entity like the International Monetary Fund, discounts the debt of a country by say 40% then all private creditors, including vulture funds, are **required** by law to discount their debt by 40%. There are no exceptions. The private entities who do not comply can be sued in New York State Court for non-compliance.

## **A Word About Puerto Rico**

The Model Law and The New York Taxpayer and International Debt Crises Protection Act all gained political traction because lawmakers thought that these bills would help United States territories like Puerto Rico. They do, to a degree, but the relief offered is only indirect and it will take an act of Congress to compel creditors to treat Puerto Rico and other US territories in the same way as what is envisioned under The Model Law and The New York Taxpayer and International Debt Crises Protection Act. What both of these acts **do offer is a blue print for Federal legislation** which benefits Puerto Rico and other United States territories. Also, if passed, these two bills would indirectly benefit Puerto Rico by improving supply chains from sovereign countries which can produce more goods without having to service private debt. It is unclear whether Champerty, which checks the behavior of vulture funds, will help Puerto Rico and US territories or only sovereign nations.

## **So where does the New York State Council of Churches come down in this debate?**

The Council strongly supports Champerty to stop or severely limit vulture funds from investing in struggling countries. Vulture funds **are not** reputable creditors. They are, instead, predatory litigators.

When it comes to helping sovereign countries manage private debt, we support The New York Taxpayer and International Debt Crises Protection Act and **we do not support** The Model Law. This is because The Model Law, as currently written, depends on finding over 50% of private creditors to discount private debt. This is increasingly unlikely since more debt is assumed by vulture funds which have increasingly replaced more reputable private creditors. Vulture funds have no interest in discounting debt in the first place. With The Model Law approach, if any discount is agreed to by 50% or more creditors, the discount would likely be small (say 5% instead of 40%) and its questionable whether vulture funds would follow suit anyway. On the other hand, The New York Taxpayer and International Debt Crises Protection Act **compels** compliance with a discount set by public entities; It makes the discount offered by public creditors **binding on private creditors. It would be enforceable in New York courts.** It is true to say that vulture funds, because they must abide by the same deal as more reputable private entities, would still make a lot of money with a large public discount (40% for example) but at least their rouge nature can be checked in a way The Model Law cannot. This is why **Champerty must also be passed** to stop vulture funds from buying debt for pennies on the dollar in the first place and undermining sovereign country economies.

## **The Politics**

We are in a situation where the proponents of The Model Law, Champerty and the Tax Payer Protection Act have done an inadequate job of ensuring that the public and legislators understand the distinctions of the three bills. Given this situation, it feels as though legislators are asked by

advocates to make choices based on rhetoric and not facts. Given the opaque nature of the public conversation, legislators, appealing to their political base, can make it sound like The Model Law is tougher on vulture funds and the proponents of the Tax Payer Protection Act are less tough, **In our view, the exact opposite is the case.** This lack of honest transparency creates confusion which will ensure no bill will get enough support to go to the floor for passage. The chaos creates a perfect political climate that enables vulture funds to exploit the confusion and uncertainty and kill everything.

### **So where do we go from here?**

Honestly, given the incomplete education of the legislature and public around this issue and the need to rework the politics to be more transparent about the bill differences, passing a good bill in the next two weeks of session looks pretty challenging. There are, however, possible paths forward which could involve taking one of four approaches:

1. Publicly name the limitations of The Model Law (which in the Council's view will do nothing to stop vulture funds given its weak enforcement mechanism) and only pass The New York Taxpayer and International Debt Crises Protection Act. **In addition, we ask for passage of Champerty to limit vulture fund damage even more.**
2. The Senate and Assembly leadership could try and meld the three bills into one bill and sell the combined bill to their colleagues for passage with accurate commentary. This melding must be done carefully, in consultation with legal counsel, by **both** the Assembly and the Senate. This melding will only work if the strengths and weaknesses of all three bills are discussed by legislators with an eye towards providing countries the best relief. The compromise bill will need to significantly limit if not totally eliminate the damage done to countries by vulture funds. It also needs to be clear what provisions in the bill will actually benefit Puerto Rico and what work needs to be done (likely by the US Congress) at a later time. We should call on Andrea Stewart Cousins, Speaker Heastie and Helene Weinstein, chair of Ways and Means to broker such a deal and ready it for passage on the floor.
3. Pass the Champerty bill as a standalone bill and wait on The New York Taxpayer and International Debt Crises Protection Act and The Model Law.
4. What cannot be allowed to happen is to pass the Model Law **over** The New York Taxpayer and International Debt Crises Protection Act. It would be better for nothing to pass than passing a bad bill.

Unless we work quickly and openly, the bills will have to wait until 2024 legislature to sort it out. In the meantime, poor countries and their citizens along with New York and United States tax payers will be left in the lurch which would be very unfortunate given the ongoing suffering.

Sincerely,

The Reverend Peter Cook, Executive Director