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Ratzlaf v. United States: Prosecuting Money Launderers Gets Tougher

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CASE REVIEW

RATZLAF v. UNITED STATES: PROSECUTING MONEY LAUNDERERS GETS TOUGHER[1]

I. INTRODUCTION

In 1970, Congress passed the Currency and Foreign Transactions Reporting Act,[2] as part of the Bank Secrecy Act,[3] in an effort to deter the use of banks and financial institutions for the furtherance of criminal activity.[4] Under authorization granted by 31 U.S.C. § 5313,[5] the Secretary of the Treasury subsequently required financial institutions to file government reports on all cash transactions in excess of $10,000.[6]

The reporting requirement did not have the desired impact. Transactions could easily be structured by bank customers to fall below the $10,000 level, thus avoiding the need for a bank to file a report.[7] Since the burden to file a report was on the bank, it was difficult to convict someone for this type of activity.[8] As a result, Congress passed 31 U.S.C. § 5324,[9] an anti-structuring law, as part of the

1. Winning Case Review of the *Tulsa Law Journal* Summer Write-On Competition held during the Summer of 1994. This closed-research program is one of the methods utilized to select students who will receive invitations for membership on the *Tulsa Law Journal*.

2. Currency and Foreign Transactions Reporting Act, 31 U.S.C. §§ 5311-14, 5316-22 (1988 & Supp. V 1993).

3. Bank Secrecy Act of 1970, Pub. L. No. 91-508, §§ 124-28, 84 Stat. 1114, 1117-18 (1970).

4. Ratzlaf v. United States, 114 S. Ct. 655, 658 (1994).

5. 31 U.S.C. § 5313 (1988).

6. 31 C.F.R. § 103.22(a)(1) (1993). The regulation provides in relevant part: "Each financial institution . . . shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000." *Id.*

7. *See, e.g.*, United States v. Aversa, 984 F.2d 493, 496 (1st Cir. 1993).

8. *See, e.g.*, United States v. Varbel, 780 F.2d 758, 762 (9th Cir. 1986); United States v. Anzalone, 766 F.2d 676, 680-83 (1st Cir. 1985). *But see, e.g.*, United States v. Tobon-Builes, 706 F.2d 1092, 1096-101 (11th Cir. 1983).

9. 31 U.S.C. § 5324(a) (Supp. V 1993). This section provides in relevant part:

> (a) No person shall for the purpose of evading the reporting requirements of section 5313(a) . . . with respect to such transaction—
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under 5313(a) . . . ;

Money Laundering Control Act of 1986 (the "Act").[10] The Act criminalized the structuring of transactions for the purpose of evading the reporting requirements of § 5313(a),[11] and made a person who *willfully* violated § 5324 subject to possible fines and imprisonment.[12]

The anti-structuring law was challenged on the basis that a willful violation should require that a person have knowledge that structuring was illegal.[13] In *Ratzlaf v. United States*,[14] the United States Supreme Court held that §§ 5322 and 5324 require individuals to have knowledge that it was unlawful to structure a transaction that avoided a bank's reporting requirement before they can be convicted of willfully violating § 5324.[15]

The Court's decision is a colossal victory for organized crime in America, and conversely, a huge loss for law enforcement officials at all levels. Furthermore, the *Ratzlaf* decision is contrary to the decisions reached by the overwhelming majority of circuit courts which had considered the issue.[16] The decision is also contrary to the language and legislative history of § 5324. Consequently, the Supreme Court should reconsider its position on this extremely important issue.

II. *RATZLAF V. UNITED STATES*

A. *The Facts*

In October of 1988, at the High Sierra Casino in Reno, Nevada, Waldemar Ratzlaf attempted to apply $100,000 in cash to his $160,000

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(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) . . . that contains a material omission or misstatement of fact; or
(3) structure or assist in structuring, or attempt to structure, or assist in structuring, any transaction with one or more domestic financial institutions.

Id.

10. Money Laundering Control Act of 1986, Pub. L. No. 99-570, § 1354, 100 Stat. 3207-18, 3207-22 (1986).

11. 31 U.S.C. § 5324(a) (Supp. V 1993).

12. 31 U.S.C. § 5322 (Supp. V 1993).

13. *See, e.g.*, United States v. Scanio, 900 F.2d 485, 489 (2d Cir. 1990).

14. 114 S. Ct. 655 (1994).

15. *Id.* at 663.

16. Before *Ratzlaf*, the majority of courts held that a purpose of avoiding a bank's reporting obligation was sufficient to establish willfulness. *See* United States v. Baydoun, 984 F.2d 175, 180 (6th Cir. 1993); United States v. Jackson, 983 F.2d 757, 767 (7th Cir. 1993); United States v. Beaumont, 972 F.2d 91, 93-95 (5th Cir. 1992); United States v. Brown, 954 F.2d 1563, 1567-69 (11th Cir.), *cert. denied*, 113 S. Ct. 284 (1992); United States v. Gibbons, 968 F.2d 639, 643-45 (8th Cir. 1992); United States v. Rogers, 962 F.2d 342, 343-45 (4th Cir. 1992); United States v. Shirk, 981 F.2d 1382, 1389-92 (3d Cir. 1992); United States v. Dashney, 937 F.2d 532, 537-40 (10th Cir.), *cert. denied*, 112 S. Ct. 402 (1991); United States v. Scanio, 900 F.2d 485, 489-92 (2d Cir. 1990). *But see* United States v. Aversa, 984 F.2d 493, 502 (1st Cir. 1993) (en banc).

gambling debt.[17] A casino official informed Ratzlaf that all cash transactions in excess of $10,000 had to be reported to the government.[18] Ratzlaf was told that the casino could accept a cashier's check for the full amount due without triggering the reporting requirement.[19]

Upon being warned that banks were under the same reporting obligations as the casino, Ratzlaf went to several different banks to purchase cashier's checks in amounts less than $10,000.[20] He sought the aid of three acquaintances who agreed to purchase cashier's checks in amounts less than $10,000 with cash supplied by Ratzlaf.[21] Transactions were conducted at the same bank by different people on the same days and by the same people at different banks on the same days, all with the purpose of avoiding the reporting requirements.[22]

Ratzlaf was convicted in the United States District Court for the District of Nevada of structuring financial transactions for the purpose of avoiding currency reporting requirements.[23] On appeal, Ratzlaf argued that the willfulness element of § 5322 should have placed a burden on the government to prove that he had knowledge that the act of structuring was illegal.[24] The Ninth Circuit affirmed the decision, holding that the willfulness element of § 5322 was satisfied by Ratzlaf's knowledge of the reporting requirement together with his act of structuring transactions to avoid the requirement.[25]

B. *The Issue*

The Supreme Court granted certiorari to determine the effect the willfulness requirement of § 5322 has on the proof needed to convict someone of a § 5324(a)(3)[26] violation.[27] If a willful violation merely requires that a person structure a transaction for the purpose of avoiding a bank's reporting requirement, then § 5322 does not add anything

17. *Ratzlaf*, 114 S. Ct. at 657.
18. *Id.*
19. *Id.*
20. *Id.*
21. United States v. Ratzlaf, 976 F.2d 1280, 1282 (9th Cir. 1992), *rev'd*, 114 S. Ct. 655 (1994).
22. *Id.*
23. *Id.* at 1282-83.
24. *Id.* at 1284.
25. *Id.* at 1287.
26. Subsequent to Ratzlaf's conviction, but before the Supreme Court rendered its decision, Congress amended § 5324. This amendment, however, was nothing more than a technical recodification of § 5324(1)-(3) as § 5324(a)(1)-(3) without substantive change. For convenience and clarity, this Case Review refers to the current codification of § 5324.
27. Ratzlaf v. United States, 114 S. Ct. 655, 657 (1994).

to § 5324(a)(3), and Ratzlaf's conviction was proper. However, if a willful violation requires that a person have knowledge that structuring is unlawful, then § 5322 imposes an additional burden that must be met in order to convict Ratzlaf of structuring.

III. LAW PRIOR TO *RATZLAF*

Prior to the Supreme Court's decision in *Ratzlaf*, the great weight of authority held that the willfulness element of § 5322 did not require prosecutors to prove that a person knew that structuring was illegal.[28] Nine circuits had ruled that knowledge of the bank's reporting requirement and intentionally structuring a transaction to avoid the requirement were sufficient grounds to find that a defendant had willfully violated § 5324.[29]

The First Circuit, in *United States v. Aversa*,[30] became the only appellate court to apply a different interpretation to the willfulness element.[31] In *Aversa*, the court held that in the prosecution of anti-structuring violations, the willfulness element of § 5322(a) requires that the government prove either the violation of a known legal duty or the reckless disregard of the same.[32] The standard announced by the court gave protection to the defendant with an innocent state of mind, while still allowing the prosecution of defendants who should have known that structuring was unlawful.

IV. THE SUPREME COURT'S DECISION

The Supreme Court, in a five to four decision, held that the prosecution must establish that a person knew that structuring was unlawful in order to sustain a conviction under § 5324.[33] In reaching its decision, the Court focused on analyzing the statutory language of the pertinent sections.[34] Finding the language unambiguous, the majority did not attempt to analyze the legislative history surrounding the enactment of the anti-structuring provision.[35]

In interpreting the statutory language, the Court disagreed with the lower courts that had treated § 5322(a)'s willfulness requirement

28. *See id.* at 665.
29. *See* cases cited *supra* note 16.
30. 984 F.2d 493 (1st Cir. 1993).
31. *See Ratzlaf*, 114 S. Ct. at 656 n.1.
32. *Aversa*, 984 F.2d at 498.
33. *Ratzlaf*, 114 S. Ct. at 663.
34. *Id.* at 662.
35. *Id.*

"as surplusage—as words of no consequence."[36] The majority concluded that the willfulness element of § 5322(a) must have some effect on the mens rea standard necessary to convict someone under the anti-structuring provision.[37] With that assumption in mind, the majority proceeded to attempt to discover the meaning of "willful" as applied to § 5324.[38]

The Court analyzed the effect that § 5322(a)'s willfulness requirement has had on other provisions within the same sub-chapter as § 5324.[39] The majority placed substantial weight on the fact that § 5322(a)'s willfulness element had been interpreted by the "Courts of Appeals to require both knowledge of the reporting requirement and a specific intent to commit the crime, i.e., a purpose to disobey the law."[40] Especially compelling to the majority were "§ 5314, concerning records and reports on monetary transactions with foreign financial agencies, and § 5316, concerning declaration of the transportation of more than $10,000 into, or out of, the United States."[41] Courts that have interpreted "these provisions have described a willful actor as one who violates a known legal duty."[42]

The majority was also concerned that applying different meanings of § 5322(a) to various sections within the same subchapter would lead to inconsistent holdings.[43] "If courts can render meaning so malleable, the usefulness of a single penalty provision for a group of related code sections will be eviscerated and . . . almost any code section that references a group of other code sections would become susceptible to individual interpretation."[44] As a result of this analysis, the Court seemed determined to apply a single meaning to the willfulness element of § 5322(a).

Attorneys for the United States argued that "§ 5324 violators by their very conduct, exhibit a purpose to do wrong, which suffices to

36. *Id.* at 659. "Judges should hesitate so to treat statutory terms in any setting, and resistance should be heightened when the words describe an element of a criminal offense." *Id.*

37. *Id.*

38. Ratzlaf v. United States, 114 S. Ct. 655, 660-63 (1994).

39. *Id.* at 659.

40. *Id.*

41. *Id.*

42. *Id.*

43. Ratzlaf v. United States, 114 S. Ct. 655, 660 (1994). "[R]eading the word differently for each code section to which it applies—would open Pandora's jar." *Id.* (citing United States v. Aversa, 984 F.2d 493, 498 (1st Cir. 1993) (en banc)).

44. *Id.* (quoting United States v. Aversa, 984 F.2d 493, 498 (1st Cir. 1993) (en banc)).

show willfulness."[45] The government claimed that structuring a transaction to avoid a bank's reporting requirement "is not the kind of activity that an ordinary person would engage in innocently."[46] Thus, it is not unreasonable to hold someone accountable for such activity without specifically proving that they had knowledge that structuring was illegal.[47]

The majority was not persuaded by this argument.[48] According to the Court, "currency structuring is not inevitably nefarious . . . ."[49] In reaching this conclusion, the Court relied heavily on examples of other instances in which persons, without violating any laws, have been able to structure transactions "to avoid the impact of some regulation or tax."[50] As an illustration, the Court noted that the Stamp Act of 1862 required a two cent duty on bank-checks in denominations of $20.00 or more.[51] It was perfectly legal, however, to write multiple checks to the same person, in amounts under $20.00, solely for the purpose of avoiding the duty.[52] A more recent example offered by the majority, is the practice of giving "a gift of $10,000 on December 31 and an identical gift the next day, thereby legitimately avoiding the taxable gifts reporting required by 26 U.S.C. § 2503(b)."[53]

Finally, the Court refused to consider the legislative history surrounding the enactment of the anti-structuring provision, even though it recognized that the legislative history contained indications that Congress intended a statutory interpretation contrary to the holding of the Court.[54]

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45. *Id.*

> On occasion, criminal statutes—including some requiring proof of 'willfulness'—have been understood to require proof of an intentional violation of a known legal duty, i.e., specific knowledge by the defendant that his conduct is unlawful. But where that construction has been adopted, it has been invoked only to ensure that the defendant acted with a wrongful purpose.

Id. (quoting Liparota v. United States, 471 U.S. 419, 426 (1985)).

46. *Id.*

47. *Id.*

48. Ratzlaf v. United States, 114 S. Ct. 655, 660-61 (1994).

49. *Id.*

50. *Id.* at 661.

51. *Id.*

52. *Id.* "While his operations deprive the government of the duties it might reasonably expect to receive, it is not perceived that the practice is open to the charge of fraud .... He has the legal right to split up his evidences of payment, and thus to avoid the tax." *Id.* (quoting United States v. Isham, 84 U.S. (17 Wall.) 496, 506 (1873)).

53. Ratzlaf v. United States, 114 S. Ct. 655, 661 (1994).

54. *Id.* at 662 ("[W]e do not resort to legislative history to cloud a statutory text that is clear").

V. ANALYSIS

A. *The Supreme Court Misconstrued the Statutory Language*

In holding that the plain language of §§ 5324(a)(3) and 5322(a) requires that a person have knowledge of the illegality of structuring to be convicted of a willful violation, the Court based much of its decision on the fact that courts had applied that standard to other sections within the same subchapter as § 5324(a)(3).[55] The Court placed special emphasis on cases involving 31 U.S.C. § 5314,[56] "concerning records and reports on monetary transactions with foreign financial agencies," and 31 U.S.C. § 5316,[57] "concerning declaration of the transportation of more than $10,000 into, or out of, the United States."[58] Unfortunately, the Court's analogy of § 5324 to these other sections is misapplied.

As the dissent cleverly observed, it is easy to confuse knowledge of illegality with knowledge of reporting requirements.[59] The sections cited by the majority involve situations in which the person charged with a willful violation is also the person who is responsible for fulfilling a reporting obligation.[60] In these cases, courts have deviated from the general rule that ignorance of the law or mistake of law is no defense to criminal prosecution.[61] These exceptions are justified, because it is impossible for someone to comply with the law when he or she is unaware that a reporting requirement exists.

By contrast, a person who violates § 5324 has structured a transaction for the sole purpose of evading the reporting requirement of the bank. Unlike the examples that the majority referred to, § 5324 violators are fully informed of the reporting requirement. Without knowledge of a bank's reporting obligation, a person cannot be convicted of willful structuring.[62]

In *United States v. Aversa*, the First Circuit correctly observed that the word "willful" has several meanings.[63] A requirement that conduct be done willfully, even in the criminal context, usually "means no more than that the person charged with the duty knows

55. *Id.* at 659.
56. 31 U.S.C. § 5314 (1988).
57. 31 U.S.C. § 5316 (1988).
58. Ratzlaf v. United States, 114 S. Ct. 655, 659 (1994).
59. *Id.* at 666 n.5.
60. *Id.*
61. *See* Cheek v. United States, 498 U.S. 192, 199 (1991).
62. United States v. Scanio, 900 F.2d 485, 491 (2d Cir. 1990).
63. United States v. Aversa, 984 F.2d 493, 497 (1st Cir. 1993), *vacated*, 114 S. Ct. 873 (1994).

what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law."[64] The majority, by its holding, rejected this definition, opting instead for the definition of willful as a violation of a known legal duty.[65] Courts have chosen to use this definition when interpreting the tax laws because of the complex nature of the code.[66] In *Cheek v. United States*, the Court made reference to the fact that it had long interpreted "willfully" in the criminal tax laws as carving out an exception to the traditional rule that "every person [knows] the law."[67] Based on the traditional definition of "willful" that is applied in criminal cases and the limited application of the *Cheek* definition, the Court has misinterpreted the statutory language of § 5322 as applied to § 5324.

B. *Evading a Known Federal Law is Not Innocent Activity*

To conduct activity that comes within the framework of the anti-structuring provision, a person must structure a transaction with the intent of avoiding a bank's statutory obligation to file a Currency Transaction Report. "[S]tructuring is not the kind of activity that an ordinary person would engage in innocently."[68] The majority's analogy of § 5324 violations to taxpayers attempting to avoid or reduce their tax obligation is without merit.[69] Avoiding taxes by following the various rules for exemptions and deductions is a lawful endeavor, while structuring transactions to prevent a government-mandated report from being filed shows a total disrespect for the legal system. In addition, a person who is aware that reporting requirements exist should realize that criminal liability might attach to conduct that is designed to avoid them.

In the Court's opinion, Justice Ginsburg illustrated how an innocent person might be convicted of willful structuring.[70] In the example, a small business owner seeking to reduce the odds of an I.R.S. audit, made cash deposits twice a week, instead of once a week, solely to avoid the bank's reporting requirement.[71] While a small, legitimate business owner might not be the type of person Congress intended the Act to affect, acting in a purposeful manner to frustrate compliance

64. American Sur. Co. v. Sullivan, 7 F.2d 605, 606 (2d Cir. 1925) (Hand, J.).
65. Ratzlaf v. United States, 114 S. Ct. 655, 659-60 (1994).
66. Cheek v. United States, 498 U.S. 192, 200 (1991).
67. *Id.* at 199.
68. United States v. Hoyland, 914 F.2d 1125, 1129 (9th Cir. 1990).
69. *Ratzlaf*, 114 S. Ct. at 661.
70. *Id.*
71. *Id.*

with a federal law can hardly be termed innocent. Furthermore, evidence about the legitimate reason for the structuring and character of the accused could be presented to mitigate the severity of the penalty.

C. *Legislative History is Compelling*

Finding the language of the statute clear, the majority did not consider the legislative history of § 5324.[72] The Court hinted that even if it had found the statute ambiguous, it would have resolved the ambiguity in favor of Ratzlaf.[73] Although lenity principles usually require the resolution of an unclear statute in the defendant's favor,[74] the principles should not be used without considering the intent and purpose of the legislation.[75] In the present case, the legislative history is so persuasive that it compels the resolution of any ambiguity in favor of the United States.

By refusing to consider legislative history, the Supreme Court failed to consider both the purpose Congress had in enacting § 5324 and the mens rea standard Congress intended for willful violations. The legislative history associated with the anti-structuring statute provides convincing evidence that Congress intended a willful violation to only require proof of knowledge of the reporting requirement and a purpose to evade it.[76] Consequently, the Court's decision imposes a requirement that must be satisfied to convict someone of willful structuring which Congress clearly did not intend.

A specific statute designed to prevent structuring did not exist prior to 1986.[77] Persons that structured transactions to avoid a bank's reporting requirement could only be prosecuted for willfully causing a financial institution to fail to file a report,[78] for knowingly and willfully concealing a material fact from the government,[79] or for conspiracy.[80] Some circuits upheld these types of prosecutions,[81] but others

72. *Id.* at 662.
73. *Id.* at 662-63.
74. Hughey v. United States, 495 U.S. 411, 422 (1990).
75. *See* United States v. Bramblett, 348 U.S. 503, 508 (1955).
76. Ratzlaf v. United States, 114 S. Ct. 655, 667 (1994) (Blackmun, J., dissenting).
77. *Id.*
78. 18 U.S.C. § 2(b) (1988). This section provides: "Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." *Id.*
79. 18 U.S.C. § 1001 (1988). This section provides in part: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies . . . by any trick, scheme, or device a material fact . . . shall be fined . . . or imprisoned . . . or both." *Id.*
80. 18 U.S.C. § 371 (1988).
81. *See, e.g.*, United States v. Tobon-Builes, 706 F.2d 1092, 1096-1101 (11th Cir. 1983).

refused to impose criminal liability for structuring absent a specific provision that penalized the activity.[82]

In *United States v. Tobon-Builes*,[83] decided prior to the enactment of § 5324, the Eleventh Circuit upheld the conviction of a person that had structured cash transactions to avoid the reporting requirements of § 5313(a).[84] Liability was based on 18 U.S.C. § 1001 in conjunction with 18 U.S.C. § 2(b).[85] The court found that the willfulness element was satisfied by proof that the defendant "knew about the currency reporting requirements and that he purposely sought to prevent the financial institutions from filing required reports by using false names and by structuring his transactions as multiple smaller transactions under $10,000."[86]

The anti-structuring provision was enacted by Congress for the purpose of criminalizing structuring transactions in jurisdictions that had refused to do so without a specific statute.[87] A Report of the Senate Judiciary Committee provides powerful evidence of the mens rea requirement that Congress intended for the anti-structuring provision.[88] The report revealed that Congress wished to codify *Tobon-Builes* and similar cases, and "negate the effect of *Anzalone*, *Varbel*, and *Denemark*."[89] By codifying *Tobon-Builes*, Congress incorporated the "*Tobon-Builes*' standard for a willful violation, which required knowledge of the reporting requirements and a purpose to evade them."[90]

Further evidence of the intent needed for a willful violation is provided by an example contained in the same Senate report. The example clearly shows that structuring transactions "with the specific intent that the participating bank or banks not be required to file Currency Transactions Reports for those transactions, would" subject a person "to potential civil and criminal liability."[91] Based on the legislative history available, there is little doubt of the standard of willfulness that Congress desired.

82. *See, e.g.*, United States v. Varbel, 780 F.2d 758, 762 (9th Cir. 1986); United States v. Anzalone, 766 F.2d 676, 679-83 (1st Cir. 1985).
83. 706 F.2d 1092 (11th Cir. 1983).
84. *Id.* at 1102.
85. *Id.* at 1099.
86. *Id.* at 1101.
87. Ratzlaf v. United States, 114 S. Ct. 655, 668 (1994).
88. S. REP. No. 433, 99th Cong., 2d Sess. 7 (1986).
89. *Id.* at 22.
90. *Ratzlaf*, 114 S. Ct. at 668 (citing S. REP. No. 433, 99th Cong., 2d Sess. 7, 22 (1986)).
91. S. REP. No. 433, 99th Cong., 2d Sess. 22 (1986).

VI. ALTERNATIVES TO THE SUPREME COURT'S HOLDING

The Supreme Court's decision has dealt a significant blow to law enforcement agencies and prosecutors who target money launderers in the United States. Convicting a person of a § 5324 violation will be nearly impossible with the added burden of proving that the defendant had knowledge that structuring is unlawful. For this reason, it is extremely vital that alternatives to the current law be given close consideration.

A. *Treasury Regulations Requiring Notice Should be Enacted*

In 1988, the Department of the Treasury considered amending the Bank Secrecy Regulations to require that financial institutions notify their customers of the anti-structuring provision.[92] This action was prompted by the fact that several defendants charged with willful structuring had argued that knowledge of the illegality of structuring was necessary to sustain a conviction under § 5324.[93] The Treasury Department issued an Advanced Notice of Proposed Rulemaking to the affected financial institutions, law enforcement agencies, and other interested parties, for the purpose of obtaining ideas on how to publicize the provision of § 5324 to customers in the most efficient manner.[94] Some of the proposals considered by the Department included posting the provisions of § 5324 by bank teller windows, printing the provisions on deposit slips, and including notices in monthly account statements.[95] Unfortunately, none of the proposed regulations were ever enacted.

Establishing a regulation that requires financial institutions to notify customers of the provisions of § 5324 would substantially assist prosecutors in convicting defendants of structuring violations. A defendant would have a difficult time claiming to be without knowledge of the unlawfulness of structuring transactions to avoid the currency transaction reporting obligations of financial institutions. The only defense would be to establish that an error in the notification system prevented the defendant from being informed. The costs of these measures would have to be weighed against the benefits, but with the

92. Advanced Notice of Proposed Rulemaking, 53 Fed. Reg. 7948 (1988) (to be codified at 31 C.F.R. pt. 103) (proposed Mar. 11, 1988). *See also Ratzlaf*, 114 S. Ct. at 658 n.6 (acknowledging this proposed regulation, but noting that it was never enacted).

93. Advanced Notice of Proposed Rulemaking, 53 Fed. Reg. 7948 (1988) (to be codified at 31 C.F.R. pt. 103) (proposed Mar. 11, 1988).

94. *Id.*

95. *Id.*

huge negative impact that the drug trade and organized crime have on our society, it would seem that the long-term benefits would far exceed the costs.

B. *The Aversa Court Provides a Middle Ground*

In *United States v. Aversa*,[96] the First Circuit established that the criminal intent necessary to convict someone of willful structuring is "either the violation of a known legal duty or reckless disregard of the law."[97] This standard provides an alternative to both the rule of law established by the Supreme Court and the standard that had been followed by the other Courts of Appeals. The *Aversa* standard addresses many of the concerns that the majority had in *Ratzlaf*. At the same time, the *Aversa* holding does not overly burden prosecutors in their efforts to convict money launderers of structuring.

The *Aversa* holding establishes the same intent requirement for every prosecution under Subchapter II of the Banking Records and Foreign Transactions Act.[98] By so ruling, the Court ensures that § 5322(a)'s willfulness requirement will be consistently applied to the various sections within the subchapter. This aspect of the decision addresses one of the chief concerns of the majority in *Ratzlaf*.

Another primary concern that the *Ratzlaf* majority raised was the possibility that common, ordinary citizens could potentially come within the scope of the statute without intending to violate the law.[99] The standard established in *Aversa* would prevent this type of situation from occurring. On the other hand, someone that obviously should suspect that structuring a transaction to avoid a bank's reporting obligation might be regulated could not escape liability. As Justice Breyer stated in his concurring opinion:

> One can imagine how a person frequently in contact with these laws, such as a financial officer or drug-fund courier, could be found to have been "reckless" in failing to learn relevant data. However, it is difficult to see how one could convict an ordinary citizen on this basis, *i.e.*, in the absence of actual subjective knowledge of the legal duty, for "recklessness" involves the conscious disregard of a substantial risk.[100]

96. 984 F.2d 493 (1st Cir. 1993).
97. *Id.* at 501.
98. *Id.*
99. Ratzlaf v. United States, 114 S. Ct. 655, 660-61 (1994).
100. *Aversa*, 984 F.2d at 503.

The *Aversa* ruling established a viable option that the Supreme Court could have chosen in deciding *Ratzlaf*. The "reckless disregard of the law" standard addresses the main concerns that the majority in *Ratzlaf* had. However, unlike the Supreme Court's interpretation of willful structuring, the *Aversa* standard will not totally restrict prosecutors from obtaining convictions of § 5324 violations. Consequently, the Supreme Court should reconsider its decision in *Ratzlaf*, and give substantial consideration to the standard of willfulness promulgated by the *Aversa* court.

C. *Congress Could Overrule Ratzlaf*

At the time of the publication of this case review, Congress was well on its way to enacting legislation that would effectively overrule the Supreme Court's decision in *Ratzlaf*.[101] Soon after the case was decided, the House Banking Committee added an amendment to H.R. 3235, a bill that is aimed at combatting money laundering.[102] The legislative history associated with the amendment clearly demonstrates that its purpose is to completely overrule the *Ratzlaf* decision.[103] The amendment exempts § 5324 from the criminal penalty provisions of § 5322.[104] At the same time, a new subsection covering criminal penalties is added to the end of § 5324.[105] Since the new provision refrains from using the term "willfully," the higher mens rea standard imposed by the Supreme Court is removed.

In addition to overruling *Ratzlaf*, the proposed legislation would greatly assist law enforcement agencies, prosecutors, and financial institutions in the continuing battle against money laundering. The legislation is designed to reduce the number of currency transaction reports filed yearly by 30%.[106] This will enable law enforcement officials to concentrate on the more suspicious transactions, while removing some of the administrative burden from financial institutions.[107] The legislation will also subject foreign bank drafts to the reporting requirements, centralize the reporting of suspicious transactions, require the improved training of bank examiners in uncovering money-

101. H.R. 3235, 103d Cong., 2d Sess. (1994).
102. 140 CONG. REC. H1562 (daily ed. Mar. 21, 1994) (statement of Rep. Neal).
103. *Id.*
104. 140 CONG. REC. H6642-99 (daily ed. Aug. 2, 1994).
105. *Id.*
106. 140 CONG. REC. H1562 (1994) (daily ed. Mar. 21, 1994) (statement of Rep. Neal).
107. 140 CONG. REC. H1562 (1994) (daily ed. Mar. 21, 1994) (statement of Rep. Leach).

laundering schemes, and require all money transmitting businesses to register with the Department of the Treasury.[108]

VII. CONCLUSION

The Supreme Court's holding will make it much more difficult for prosecutors to prevail in cases arising under § 5324(a)(3). Establishing that a defendant had knowledge of the illegality of his actions is an extremely challenging, if not impossible, task. As a result, the money launderers of the United States will likely again turn to the banking system to aid them in turning illegal profits into usable currency. Consequently, it is imperative that either Congress or the Supreme Court act quickly to reconsider this issue.

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108. *Id.*