

BANKRUPTCY REFORM -- (Senate - March 08, 2005)

Mr. FRIST. Madam President, we have made tremendous progress on the bankruptcy bill over the last 2 weeks. Republicans and Democrats have stood together to support a bankruptcy reform package that the House will pass and the President will sign into law. The Senate has resisted attempts to renegotiate hard-fought compromises and legislate on unrelated issues. I do thank my colleagues, our colleagues, for staying focused on the bankruptcy bill.

There have been many attempts to sidetrack the Senate on this bill. But let me just take a moment to reiterate why we need bankruptcy reform and what this bill really does.

The bill before us establishes a means test based on a simple, fair principle: those who have the means should repay their debts. Personal bankruptcies are skyrocketing, and wealthy debtors are walking away from debts that they had the ability to repay. Opportunistic debtors who have the means to repay use the law to evade personal responsibility.

This abuse does not hurt the creditor only, it hurts all who pay higher fees and prices as a result. Every bill that you and I pay, that our families pay, includes a "bankruptcy tax" of about \$400 a year per household. That tax is figured into every bill, every phone bill, every electric bill, every mortgage payment, every furniture purchase or car loan we pay. Interest rates are higher, downpayment requirements are larger, grace periods become shorter, late payment penalties become astronomical--all because some people are shirking their debt obligations.

This legislation is targeted to ensure that wealthy debtors who can pay their debts do so. It specifically exempts anyone who earns less than the median income in their State, and it also allows every consumer to show special circumstances if they cannot handle a repayment plan.

We know that one reason people file for bankruptcy is because of unexpected medical emergencies. Consequently, this legislation allows every filer to deduct 100 percent of their medical costs. We also know that education is a big outlay for many families. Under bankruptcy reform, parents can deduct private school tuition to protect their children's educational opportunities.

In addition, the bankruptcy bill strengthens protections for child support and alimony payments. It protects patient privacy and care during bankruptcy proceedings that involve health care facilities. It protects consumers from deceptive credit practice that can lead to financial distress, and it protects the system that allows America to be one of the most generous countries when it comes to bankruptcy.

There remain, however, some misconceptions about this bill that should be dispelled. The first regards our protections for Active-Duty military personnel and veterans. Some

opponents of the bill charge that we do not adequately address the needs of our combat men and women who suffer financially.

Madam President, it should go without saying that the Senate and the American people deeply honor our men and women in uniform. Every day, these young soldiers sacrifice to protect us and to defend the freedom we enjoy. We are indebted to them for the dangers they face on the field, and we are indebted to their families they leave in order to fight for that freedom.

That is why last Tuesday we passed the Sessions amendment to help clarify protections for our military and others under a safe harbor in the bill. This provision, which passed with 63 votes, makes explicitly clear that Active-Duty military and low-income veterans are protected by the safe harbor. In addition, it also protects debtors with serious medical conditions.

On this issue, the other side has created a red herring designed to score political points and shift the debate away from bankruptcy abuse. Another red herring is the charge that the bankruptcy bill sacrifices consumers to benefit credit card companies. The truth is that the bill before us includes several carefully negotiated amendments that expressly protect credit card holders.

Among its beefed-up consumer protections are increased disclosure requirements for credit card statements and mandates that credit card companies assist borrowers in determining how long it will take to pay off their credit card balances, additional disclosures to borrowers buying and refinancing their homes, and additional disclosures regarding credit card introductory rates and new disclosures related to credit card late fees.

These protections are the result of lengthy and careful negotiation. Additional measures should be properly addressed in the Banking Committee. As Senator *Sessions* has pointed out, we are debating a bankruptcy bill designed to create a fair and commonsense process in the Federal courts.

Moreover, the bill before us has passed this body three times, with overwhelming bipartisan support. In the 105th Congress, it passed by a vote of 97 to 1. In the 106th Congress, it passed 83 to 14. And again in the 107th Congress, it passed by a vote of 82 to 16.

It is time to take action on this much needed reform that is supported by both sides of the aisle.

I am confident that by working together we can get this done in this Congress, this week, and see bankruptcy reform signed into law. I encourage our Members, this afternoon, to vote for cloture so we can bring this bill to fruition, to make it the reality we know the American people deserve.

It is long past time to stop the abuses of the Bankruptcy Code. The legislation before us is thoughtful. It is built on common sense. It offers the opportunity to give the system, and the people it is designed to help, a fresh start. In short, it promises to deliver meaningful solutions that will keep America moving forward.

Madam President, I yield the floor.

**BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT
OF 2005 -- (Senate - March 08, 2005)**

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

Pending:

Dorgan/Durbin amendment No. 45, to establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.

Pryor amendment No. 40, to amend the Fair Credit Reporting Act to prohibit the use of any information in any consumer report by any credit card issuer that is unrelated to the transactions and experience of the card issuer with the consumer to increase the annual percentage rate applicable to credit extended to the consumer.

Reid (for Baucus) amendment No. 50, to amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by an vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease.

Dodd amendment No. 52, to prohibit extensions of credit to underage consumers.

Dodd amendment No. 53, to require prior notice of rate increases.

Kennedy (for Leahy/Sarbanes) amendment No. 83, to modify the definition of disinterested person in the Bankruptcy Code.

Harkin amendment No. 66, to increase the accrual period for the employee wage priority in bankruptcy.

Dodd amendment No. 67, to modify the bill to protect families.

Kennedy amendment No. 68, to provide a maximum amount for a homestead exemption under State law.

Kennedy amendment No. 69, to amend the definition of current monthly income.

Kennedy amendment No. 70, to exempt debtors whose financial problems were caused by failure to receive alimony or child support, or both, from means testing.

Kennedy amendment No. 72, to ensure that families below median income are not subjected to means test requirements.

Kennedy amendment No. 71, to strike the provision relating to the presumption of luxury goods.

Kennedy amendment No. 119, to amend section 502(b) of title 11, United States Code, to limit usurious claims in bankruptcy.

Akaka amendment No. 105, to limit claims in bankruptcy by certain unsecured creditors.

Feingold amendment No. 87, to amend section 104 of title 11, United States Code, to include certain provisions in the triennial inflation adjustment of dollar amounts.

Feingold amendment No. 88, to amend the plan filing and confirmation deadlines.

Feingold amendment No. 89, to strike certain small business related bankruptcy provisions in the bill.

Feingold amendment No. 90, to amend the provision relating to fair notice given to creditors.

Feingold amendment No. 91, to amend section 303 of title 11, United States Code, with respect to the sealing and expungement of court records relating to fraudulent involuntary bankruptcy petitions.

Feingold amendment No. 92, to amend the credit counseling provision.

Feingold amendment No. 93, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 94, to clarify the application of the term disposable income.

Feingold amendment No. 95, to amend the provisions relating to the discharge of taxes under chapter 13.

Feingold amendment No. 96, to amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13.

Feingold amendment No. 97, to amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13.

Feingold amendment No. 98, to modify the disclosure requirements for debt relief agencies providing bankruptcy assistance.

Feingold amendment No. 99, to provide no bankruptcy protection for insolvent political committees.

Feingold amendment No. 100, to provide authority for a court to order disgorgement or other remedies relating to an agreement that is not enforceable.

Feingold amendment No. 101, to amend the definition of small business debtor.

Talent amendment No. 121, to deter corporate fraud and prevent the abuse of State self-settled trust law.

Schumer amendment No. 129 (to amendment No. 121), to limit the exemption for asset protection trusts.

Durbin amendment No. 110, to clarify that the means test does not apply to debtors below median income.

Durbin amendment No. 111, to protect veterans and members of the armed forces on active duty or performing homeland security activities from means testing in bankruptcy.

Durbin amendment No. 112, to protect disabled veterans from means testing in bankruptcy under certain circumstances.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I understand that at 10:15, the Senator from New York is to be recognized to offer an amendment?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. KENNEDY. Madam President, this bankruptcy bill is mean-spirited and unfair. In anything like its present form, it should and will be an embarrassment to anyone who votes for it. It is a bonanza for the credit card companies, which made \$30 billion in profits last year, and a nightmare for the poorest of the poor and the weakest of the weak.

It favors the credit card companies, the giant banks, and the big car loan companies at every turn. It favors the worst of the credit industry--the interest rate gougers, the payday lenders, and the abusive collection agencies. It hurts real people who lose their savings because of a medical crisis or lose their jobs because of outsourcing or suffer major loss of income because they were called up for duty in Iraq or Afghanistan.

It protects corporate interests at the expense of the needs of real people. It does absolutely nothing about the glaring abuses of the bankruptcy system by the executives of giant companies such as Enron, WorldCom, and Polaroid, who lined their own pockets but left thousands of employees and retirees out in the cold.

It favors companies like MBNA, a top credit card issuer, with over \$80 billion in loans, which has contributed \$7 million to Federal candidates, a half a million dollars to President Bush alone, and spent over \$20 million in lobbying, since 1997, when their lobbyists wrote this bill.

On the other side are people like special ed teacher Fatemeh Hosseini on the front page of Sunday's Washington Post. She fell on hard times when her husband left her and their three children. After her credit card debt reached \$25,000, she stopped using the cards and took a second job to try to pay down that debt. She paid \$2,000 a month but was hit with very high interest rates, which were raised even higher because of missed payments, heavy late fees, and over-limit penalties.

She made no new purchases, but by last June her \$25,000 debt had nearly doubled to almost \$50,000. The longer she tried to pay what her statements told her were her minimum payments, the more her debt went up. When all of her salary was going for payments, she had no choice: she was forced into bankruptcy, in the hope of getting the "fresh start" the Nation has long provided to its working people when they hit bottom.

This bill says to companies like MBNA: We'll help you scare that teacher out of going into bankruptcy by making the bankruptcy process expensive and burdensome to people like her. If we can't scare her away, we will help you squeeze your high interest rates out of her for a few years longer, even though she can't possibly pay off the amount she owes. We will take sides with companies like you and against people like her.

That is what this bill says. We all know that is wrong. How could the Senate possibly do something so immoral and unreasonable and unfair to our constituents when they are most in need of our help? Where are the vaunted values our colleagues talk about so much? Why didn't the Judiciary Committee do something about this travesty before it reached the floor? Why haven't we fixed it on the floor after more than a week of debate?

This bill was bulldozed through the committee on the pretense that we should not deal with its serious problems there but should wait until it reached the full Senate for serious negotiations and basic improvements. We were assured that there would be good-faith discussions and compromises and that all reasonable amendments would be given fair consideration.

But now there has been no good faith at all--no meaningful discussions, no negotiation, no real consideration of any of the very reasonable amendments that have been proposed to give this bill some shred of balance and fairness. On the contrary, the Republican leadership has invoked the strictest possible party discipline. When individual Republicans say they want to support or offer constructive amendments, they are ordered not to do so. Even when a Republican identifies a serious gap in the bill, such as the very basic jurisdiction outrage pointed out by Senator *Cornyn*, an outrage that has prejudiced workers and retirees in almost every State, the Republican leadership said no and refused to let the amendment be called up.

The excuse for this bad faith and breach of promise is itself bizarre. The Republican leaders say they cannot upset the delicate compromise reached two Congresses ago, but the only real compromise was the one that had the Schumer amendment in it, and this year's bill doesn't have that amendment in it. In committee Senator *Schumer* discussed his amendment, but I didn't see the other side jumping up to adopt it in order to restore and preserve the so-called compromise. The floor leaders have not indicated that they plan to accept this amendment to restore and preserve the supposed compromise.

Let's be clear--any pretense of protecting a previous compromise disappeared when the bill's sponsors unilaterally took the Schumer amendment out of the bill before introducing it this year. So there is no compromise before us in the first place. What's more, even the 2001 bill is now totally obsolete.

A great deal has happened in the past 4 years that helps us understand the real issues in this bill and shows that abuse of the system by consumers is not the real problem. We have now felt the full impact of the Bush economic decline, the broad record levels of sustained unemployment.

We have seen an explosion of medical costs, prescription drug costs, and health insurance costs. We have seen job after job eliminated or downgraded or outsourced.

A half million guardsmen and reservists have been called to active duty in Afghanistan or Iraq, leaving their families and their jobs and their small businesses behind to suffer the economic consequences, but this Senate said no to the Durbin amendment.

We have seen the enormous harm caused to employees and retirees by corporate mismanagement and fraud at major companies like Enron and WorldCom and Polaroid, which abused the bankruptcy laws to avoid their obligation to their own loyal workers. We have seen credit card rates go higher and higher and higher, as high as 30 percent or more, plus fees and penalties and charges, raising credit card profits by another \$10 billion, even as general interest rates remain low.

We have seen the credit card companies use a self-help remedy for the problems they create by their own indiscriminate and predatory marketing practices. They charge still higher risk-based rates to the very same people who can't even afford the lower bait-and-switch rates.

We now know a lot more about the abuse of bankruptcy this bill was supposedly designed to address. Four years ago we were told we were a nation of bankruptcy abusers. But now, thanks to the careful study of actual bankruptcy case files, we know the truth. We know that 50 percent of the families who go bankrupt have suffered from serious medical problems and have exhausted their savings. Most of those families had paid for health insurance, but it still left them with no financial protection from serious illness or accidents.

If the family is impacted by cancer, you know right at the outset, even if they have health insurance, they are going to have a \$35,000 bill. If it is the heart or stroke, it may be \$20,000. If they have a child, spina bifida, autism, other kinds of serious children's diseases, it is going to be \$15,000 to \$20,000. We know that right at the start. And in too many instances, that is just enough to throw hard-working Americans into the bankruptcy system and the harsh provisions of this legislation. Most of these families tried in every possible way to avoid bankruptcy for years. They gave up food and medicine and utilities and other necessities of life and even transferred their elderly parents into less adequate nursing homes in order to try and avoid bankruptcy. But facts like these don't bother the sponsors of this bill. They just make it up as they go along.

In the past week, for example, some of us offered amendments that would exempt people from the burdensome procedures in this bill if their finances were devastated by medical problems or because they were called up for military duty, and they were voted down. Instead the bill's sponsors introduced and adopted a devious amendment that they said would do what our amendment did. But, of course, it did nothing of the kind. It simply added some words about medical costs and military callups in a way that did not change the real substance of the committee's bill.

The sponsors also said our amendments exempting those below the median income from the means test were unnecessary because low-income filers were already exempt. If they really mean what they say about no means testing for people below the median income, then they should not be refusing to accept our amendment which makes that exemption absolutely clear.

Another Democratic amendment would have placed a generous limit of 30 percent on the interest rates any credit card company could charge. It very carefully stated that it would not change the status quo in States which already had lower limits. That didn't stop the bill's supporters from claiming that the bill would be an intrusion on States rights because it would lift the limit in States with a lower limit.

And perhaps the most outrageous claim of all, one which I thought was dead and buried after it was dragged out in 2001, was dragged out again--a big blue chart and all--and further inflated in their debate. The sponsors repeated the old chestnut that every American family is paying \$400 a year in a hidden bankruptcy tax for abuses that this bill would stop. Only now they say this mysterious tax has risen to \$550 per person per year.

How is the original \$400 number calculated? The debts discharged from all consumer bankruptcies each year are about \$40 billion. There are 100 million families in the United States. Therefore, those consumer bankruptcies must be costing each family \$400 per family. But this phony math assumes that every dollar discharged in bankruptcy, 100 percent, could have been collected in full, if not for the massive abuse of the system by every consumer who goes bankrupt.

It assumes that the credit card companies and payday lenders and other lenders who collect this debt under the bill would somehow distribute it to all 100 million American families instead of keeping it for themselves. Obviously, neither of these assumptions is true. Even the bill's supporters have long ago conceded that the maximum conceivable amount recoverable from the consumer bankruptcies is about 10 percent of the total. Other estimates conclude that the real number is a small fraction of that.

We don't have to guess what a responsible lender's loss from bankruptcy abuse might be. The lead-off pro-bill witness at our hearing on the bill was the head of the Wisconsin community credit union, testifying for the national credit union lobby. He told us in the last 9 years his credit union has had an average of 10 bankruptcies a year from 11,000 members. He estimated that the 9-year loss from abusive cases was \$15,000 to \$75,000, with the higher figure based on an unlikely assumption of 15 percent abuse. His credit union's loss from possible abuse spread across its entire membership was 15 to 74 cents a year per member--not per every family in his county or state, but just his members. Yes, a real 15 cents instead of the mythical \$400 dollars we have heard about for years on this floor.

Why is that lender's loss from abuse so low? Because that credit union cares about its members, who are also its owners. It gives them a credit level appropriate to their finances, and does not promote across-the-board increases in credit limits. It routinely monitors credit card debt for signs of trouble. When members hit hard times, the credit union does not pounce on them. It looks for ways to help them out. In short, it is a careful and responsible lender, not a predatory lender.

Hello? Could this tell us something about the real problem here? Perhaps the credit card companies who are really pushing this bill should think again about having solicitation desks every fifty feet in the airport, offering gifts to anyone who signs up for a card. Perhaps they should think twice about offering multiple cards to young college students. Perhaps they should not encourage people to raise their card limits recklessly or send them pre-printed checks against their accounts in junk mailings. Perhaps they should not send monthly statements urging their customers to pay only the monthly minimum and pile up their debt.

This bill does nothing to prevent the enticements that the credit card companies use to run up their profits. It does nothing to prevent the real abuses of the system by those who use unlimited homestead exemptions or ``protective" trusts to hide tens of millions of dollars from the bankruptcy process.

We still have time for common sense amendments on all of these issues, but unless there is a change in direction, Republican party discipline will be invoked to defeat them.

In fact, the present bankruptcy system has an effective way of dealing with real abusers. Bankruptcy judges can and do deny the petitions of those who have defrauded or abused the bankruptcy process. The corporate sponsors of this bill know that, but their real motivation is only partly to squeeze millions more dollars from the people who do get into the bankruptcy system.

The more insidious purpose of this bill is to frighten people away from the system altogether, by making it so burdensome and expensive, that they delay filing for bankruptcy or never file. That way, the predatory lenders can continue to collect excessive interest and fees and penalties month after month from people who cannot afford to pay them.

What this bill does to catch the very small number of potential abusers--most of whom can be caught and screened out under the existing system--is to impose huge new paperwork and filing and counseling and other barriers on all those who seek to enter the system, whether they are above or below the median income level, and whether or not there is the slightest indication that they are trying to game the system.

Why else would the bill place such strict and intolerable personal liability on the bankruptcy lawyer for mistakes made in the detailed information provided by the client? In Boston and throughout the country, pro-bono lawyers from leading firms now lend a hand with bankruptcy filings to people down on their luck. The sponsors know that if this bill passes, those firms will not let their lawyers do that public interest work, because the risk will be too high.

There is so much wrong with this bill that we must take the time to get it right. That is why we must have a serious discussion and negotiation and amendment process.

That is why we must defeat tomorrow's cloture vote and continue to seek a bill that is not an embarrassment to the Senate and the fundamental principle of fairness and simple justice for all. It's wrong, deeply wrong, for the Senate to rubber-stamp the greed of the credit card industry.

In a few moments, the Senator from New York will be recognized. I wanted to add a word of support for his amendment. His amendment is not about abortion. It is about violence. Those who promote the culture of life should not be encouraging acts of violence against any members of our society. There is no legitimate reason to oppose this amendment. Those who break the law through violence and intimidation should not have bankruptcy as a shield.

Finally, in a vote later this afternoon, the Senate will declare its true loyalties. Do we stand with low- and middle-income families who fall on hard times, or do we stand with the credit card companies looking for higher and higher profits at any cost? If we are true

to our values, we will stand with America's families and defeat this bill because above all else, America stands for freedom and fairness and opportunity. There is nothing fair about a single parent struggling to make ends meet only to be gouged by credit card companies with double-digit rates. There is no freedom in falling ill with cancer and facing a mountain of medical bills only to be hounded by credit card companies to pay them first.

And what is fair when an average American who has done everything right still has to go alone into bankruptcy court and stand up against the big credit card companies and all their might and try to make a fresh start?

I am reminded of the words of Leviticus in the 25th chapter which reads: If one of your brethren becomes poor and falls into poverty among you, then you shall help him, like a stranger or a sojourner, that he may live with you. Take no usury or interest from him, but fear your God that your brother may live with you. You shall not lend him your money for usury nor lend him your food at a profit.

One glance at the story of Fatemeh Hosseini shows that even when you try your hardest to repay your debts, you are met by the cold, cruel world of the credit card companies. With our vote this afternoon, we have an opportunity to live up to the words of Leviticus and our basic values as Americans and vote against this bill.

The PRESIDING OFFICER (Mr. **VITTER**). The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I thank the Senator from Massachusetts for his leadership on this legislation. The bill we are considering today, S. 256, is the bankruptcy reform bill. For American families who have been absolutely devastated by medical bills, by loss of jobs from outsourcing of jobs overseas, by family circumstances beyond their control, this bill makes it more difficult to go to bankruptcy court to put whatever they have on the table and to try to start anew. It was written by the financial industry, by credit card companies, and big banks in an effort to make certain that people in debt never get out of debt. They want to make certain that debt will hound you and trail you for a lifetime.

When Senator *Kennedy* offers an amendment and says should we not at least say to people who have been devastated by a medical crisis in their family and go through bankruptcy that they will have a roof over their heads, that we will protect their home for \$150,000 worth of value, the Republicans on this side of the aisle said no. They should put that home up, lose it if necessary, if they want to file for bankruptcy.

I offered an amendment that said what about the Guard and Reserve units, men and women who are serving overseas leaving behind businesses that go bankrupt? Should we not give them some consideration in this bill? Should not the harshest aspects of this bill not apply to men and women in uniform serving our country? The Republican side of the aisle said no; apply the law as harshly as possible to these soldiers as you would to everyone else.

Time and again, as we have offered amendments to try to stand up for those who were struggling in America to get by in a tough economy, in difficult times, facing family disasters, the Republican side of the aisle said it is more important that the credit card companies get another dollar from those families. It is more important that the banks prevail. Even if the loans they offered in the first place are illegal, we have to stand by the credit industry.

The credit industry will win this battle. American families, American soldiers, and those struggling with medical bills will be the losers.

I hope before this bill is completed that a few basic amendments that show common decency and common sense will prevail.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 10:15 a.m. having arrived, the Senate will proceed to the consideration of amendment No. 47 to be offered by the Senator from New York. The time until 12:15 p.m. will be equally divided for debate.

Does the Senator offer the amendment?

AMENDMENT NO. 47

Mr. SCHUMER. Mr. President, I offer the amendment, and I ask unanimous consent that Senator *Feinstein* be added as a cosponsor to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. **SCHUMER**], for himself, Mr. *Reid*, Mr. *Leahy*, Mrs. *Murray*, and Mrs. *Feinstein*, proposes an amendment numbered 47.

Mr. SCHUMER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit the discharge, in bankruptcy, of a debt resulting from the debtor's unlawful interference with the provision of lawful goods or services or damage to property used to provide lawful goods or services)

On page 205, between lines 16 and 17, insert the following:

SEC. 332. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH VIOLATIONS OF LAWS RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.

Section 523(a) of title 11, United States Code, as amended by this Act, is further amended--

(1) in paragraph (18), by striking ``or" at the end;

(2) in paragraph (19), by striking the period at the end and inserting ``; or"; and

(3) by inserting after paragraph (19) the following:

``(20) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor, including any court ordered damages, fine, penalty, citation, or attorney fee or cost owed by the debtor, arising from--

``(A) an action alleging the violation of any Federal, State, or local statute, including but not limited to a violation of section 247 or 248 of title 18, that results from the debtor's--

``(i) harassment of, intimidation of, interference with, obstruction of, injury to, threat to, or violence against, any person--

``(I) because that person provides, or has provided, lawful goods or services;

``(II) because that person is, or has been, obtaining lawful goods or services; or

``(III) to deter that person, any other person, or a class of persons, from obtaining or providing lawful goods or services; or

``(ii) damage to, or destruction of, property of a facility providing lawful goods or services; or

``(B) a violation of a court order or injunction that protects access to--

``(i) a facility that provides lawful goods or services; or

``(ii) the provision of lawful goods or services.

Nothing in paragraph (20) shall be construed to affect any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States."

Mr. SCHUMER. Mr. President, I hope everybody will pay attention to this debate, which has been going on intermittently in the Chamber for the last 4 or 5 years. Not much has changed, except the votes of some of my colleagues, if you can believe the press reports.

Let me start by saying I believe in bankruptcy reform. It is very wrong for people to abuse the code. But reform should be across the board, it should be applied fairly. It should not be just for some interests. When some interests are abused, we legislate on that, but when other interests are abused, we do not. It should not sweep under the rug people who have real needs, as the amendments of some of my colleagues--the Senator from Massachusetts and the Senator from Illinois--have tried to address. A reform bill should not contain a trove of treats for some supposed victims of the system, such as banks and credit card companies, but leave others shivering in the cold.

For this reason, the bankruptcy bill before us today does not do the trick. It has many deficiencies and, to my mind, a glaring, gaping hole. While the bill supporters give lipservice to fairness, they have carved out a loophole for those who use violence, for those who seek to use bankruptcy for a purpose it was never intended. It is a loophole that I cannot live with, and, once upon a time, in a different world, the vast majority of Senators agreed with me and voted to close this loophole.

Most of you are already familiar with this provision. After all, most of you have voted for it before. Indeed, this is identical language; there is not a single word change in this amendment, the Schumer-Reid amendment, from the amendment that was added to the bill a few years ago. This identical language was contained in the compromise bill we have heard so much about this past week.

Along with Senator *Reid*, I am reintroducing the provision that would close this loophole once and for all. I am pleased that Senators **LEAHY**, **FEINSTEIN**, and **MURRAY** are also cosponsors of the amendment.

Put simply, the Schumer-Reid amendment would end the ability of violent extremists to hide behind bankruptcy laws to escape court-imposed debts. The amendment is very simple: If you use violence or the threat of violence to achieve a goal, a political goal, and you are successfully sued--as you should be--by the person or persons you have used violence against, you cannot then go back home to a bankruptcy court and say, protect me. Has anyone who ever envisioned the bankruptcy law felt that it should be used to protect those who use violence or threats of violence? I doubt it.

There is talk by some of ``peaceful protests." As I will talk about later, the bill explicitly protects peaceful protests but not violence or the threat of violence. It doesn't matter if you are an extremist in the pro-life movement or the animal rights movement or any other movement; if you believe you are so right that you have the ability to take the law into your own hands and threaten others and do violence to others because your knowledge and feelings are superior to everybody else's, you are wrong. That is not

American. Again, you should not be allowed to use the Bankruptcy Code to protect yourself from a rightfully imposed civil remedy.

This amendment could really be called the Schumer-Reid-Hatch amendment because in 2001 Senator *Hatch* sat down with me and together we worked out this compromise. We worked out this precise language in a bipartisan fashion over 4 years ago. There is only one difference--that since we worked out this compromise, which a large number of colleagues on the other side of the aisle supported, including those who disagree with me on the issue of choice, we have found that a small group in the House has been able to block the bill if it had this amendment in it. There is no reconsideration of the merits of the amendment. There is no argument made against the amendment that hasn't been made before and rejected overwhelmingly by this body. It is simply allowing a small few in the other body to dictate what we are doing here.

If reason and logic prevail, this amendment would be considered among the least controversial and most sensible fixes to the current bill. If bipartisanship and consistency were the order of the day, this provision, which was unceremoniously stripped from the current bill, would pass again overwhelmingly. The bill is intended to curb abuses of the Bankruptcy Code. But why are we curbing abuses when the victim is a credit card company or a bank but not anybody else? Why not also when the victim is a woman pursuing her constitutional rights? Does that woman have any less rights than a bank or credit card company, or a doctor pursuing a living, doing what he believes is right and what is allowed by law, according to the Supreme Court and enshrined in the Constitution, and this doctor tries to prevent people from hounding his children, from threatening them with violence, and then you say, no, we are going to protect the credit card companies and the banks but not that doctor, not that woman; is that fair? Is this bill fair and balanced?

We want to reform bankruptcy; there are abuses. But why are we only reforming the abuses that affect some and not others? Why are we only reforming the abuses that affect some of the most powerful interests and not those who are weaker or more helpless?

In the current climate, I am sad to say that there appears to be an edict from the leadership on the other side to vote down every amendment, no matter what its wisdom for efficacy. That is not what the Senate is about, that is not what America is all about, and that is not what our constituents sent us here to do. It would be a tragedy if that sort of marching-in-lockstep attitude affected the Schumer-Reid amendment.

Let me take a minute to describe the history of this amendment, to refresh the recollection of many of my colleagues who may have forgotten it. Let me tell you what happened. Of course, *Roe v. Wade* was passed by the Supreme Court in 1973. Many opposed *Roe v. Wade*; they felt it was against their religious beliefs. I respect those religious beliefs. A large movement of protests developed, the vast majority of which was peaceful. The former bishop in my home of Brooklyn would stand in front of a clinic every week and pray the rosary. That is an American thing to do. That is a peaceful protest. But there were some--an extreme few--who decided that they were so right, that

what they heard from God prevailed over what anybody else heard from God, and that they should take the issue into their own hands. Some used the methods of blockade, passive resistance. Others went further. They would put acid on clinics that would render them useless--a destruction of personal and private property, if there ever was. They would threaten doctors. They would follow their children going home from school and harass them. Inhumane. They would even encourage people to kill doctors. We know doctors who were killed.

This protest movement was largely successful. It shut down about 80 percent of the clinics in America. There were some States and many counties where a woman who was seeking her own right to choose would not get that right, and, as a result, a number of us worked on a law--I was a sponsor in the House, and I believe Senator *Boxer* was a sponsor in the Senate--that would give the clinics that offered people a way to effect their right to choose some help. The law made it a Federal crime to use violence or the threat of violence against clinics. That was necessary because you had large jurisdictions where the elected sheriff said, I will not enforce the law, taking matters into his own hands.

As we were discussing what to do with this bill, I remember a meeting in New York, and a young woman from one of the defense funds that represent women said: Why don't you include the right to sue, so if the Federal Government is unwilling or slow and cumbersome in protecting this Federal right, the clinic could sue. We put it in the bill as an afterthought, but it really proved to be the hope and the salvation of the clinics because they began to sue those who would blockade them when police forces would not enforce the law.

There was Dobbs Ferry in New York, where they wanted to enforce the law. They had a police force of three, and hundreds of people were protesting violently and blockading--not peacefully--and the police force was overwhelmed. But the right to sue opened up these clinics and, once again, the constitutional right, available voluntarily to women.

No woman is forced to avail herself of this right; it is choice. That is what it is all about--choice. Your beliefs may be different from mine, but I respect yours; I hope you respect mine. I am not imposing mine on you, and you should not impose yours on me, particularly when they are deeply held religious beliefs. That is America.

So the clinics were open again. Many of these violent protesters sort of faded away. They realized the legislatures were going to keep the *Roe v. Wade* law, that they could not succeed in overturning it. If you believe the polls, over 60 percent of Americans support the right to choose. They had turned to violence and threats of violence, and now the FACE law had stymied them in that decidedly un-American way to enforce your views or effect your views. So we offered an amendment.

I skipped one point. Some of the more militant of these groups--the militant of the militant--came up with a new way to avoid these civil suits that the FACE law allowed. They said: Go back and declare bankruptcy once you are sued, and then they cannot pursue the money judgment used against you. This was made particularly difficult

because most of the groups that used violence or threats of violence were not indigenous. They were not from the local community. There were a lot of people against the clinics in the legal community, but they, like most Americans, effected their views peacefully.

But these were sort of roving bands of groups from across the country. They would be sued successfully, and then they would each go back to their home jurisdiction and file for bankruptcy.

It was impossible for these clinics, most of which were small and not terribly well funded, to then file after they won the first suit--a burden enough to them. They should not have had to do it. It should have been the Federal Government or the local government enforcing the law. But they went back home, declared bankruptcy, and the clinics were not able to pursue each of those suits in their home States.

An example is that of the notorious Nuremberg files case that took place in Portland, OR. The defendants created, in that case, a Web site that collected personal information about providers of abortion, clinic staff, law enforcement officials, judges, and even Senators. The site listed the names of those wounded in gray type and for those who had been killed--including Dr. Barnett Slepian in my State who was murdered in front of his family in 1998--they crossed out the names, as if they had achieved something good.

Doctors and their families targeted by this Web site had to wear bulletproof vests, install security systems, and take other precautions. As one witness testified before the Judiciary Committee, speaking of the targeted doctors:

They are not secure in their homes or in their offices. They do not sit by windows in restaurants, and they even refrain from hugging their children in front of open windows.

Can you imagine? Under the FACE law, the victimized doctors sued these violent radicals who would threaten them. Judges and juries sided with the victims and issued verdicts. For example, there was a \$109 million verdict against the Nuremberg defendants. In another case, Operation Rescue President Randall Terry ran up \$1.6 million in fines on account of his acts of clinic violence. But did these violent extremists pay up? No. They instead filed for bankruptcy to avoid responsibility for their heinous acts. In fact, many of these public defendants publicly bragged about being judgment proof and thumbed their noses at their victims, forcing years of protracted litigation.

Randall Terry, for example, blithely filed for bankruptcy to avoid paying his debts. And the Nuremberg file defendants forced bankruptcy litigation for years in six different jurisdictions to avoid their debts. Some of the extremist groups even recruited people and had as a criteria for admission to the group that you make yourself judgment proof. One radical group, for instance, the American Coalition of Life Activists, drafted its Constitution to state that members of the organization ``must have their assets protected from possible civil lawsuits (judgment proof)."

As one can imagine, with these tactics, it took years to enforce the judgments against these violent radicals, and victimized doctors, families, and clinics could not get the justice they deserved. We all know that the wheels of justice are sometimes too slow, but tactics such as this made a mockery of our system.

So when the bankruptcy bill came before the Senate back in 1999, I offered an amendment to stop this awful abuse of the system. It made sense. It was not adding a new issue to the bill. The bill was supposed to deal with abuses of bankruptcy, and if there was ever an abuse of bankruptcy, what these violent extremists did was an abuse of the bankruptcy law. No one, when they wrote the bankruptcy law, thought the Randall Terrys of the world deserved protection.

When I offered the amendment, Senator *Hatch* and others--some pro-choice, some pro-life--came to me and said: Why are we singling out pro-life activists who engage in violence and take the law into their own hands? What about other extremists who abuse the Bankruptcy Code by using violence or the threat of violence?

They were right. So we sat down. We had a fruitful discussion. From this, Senator *Hatch* and I worked out a compromise with which everyone could live. We hammered out an amendment that was not particular to the issue of the clinics but dealt with anybody who would use violence or the threat of violence in the same way--blockades, arson, whatever. They, too, if they had a judgment against them, could not go to bankruptcy court and successfully ask for protection.

The amendment we have does not mention the word "abortion" or "choice." It simply talks about anyone who uses violence. It would be applied with equal force and vigor to animal rights activists, to the environmental extremists in the ELF movement. It only affects, frankly, those on the far right or the far left who believe they are so morally superior to all of us that they can avoid this constitutional democracy and, with violence, take actions into their own hands. Anyone who violently or misguidedly blocks access to services, whether in the name of the pro-life movement, the animal rights movement, the environmental movement, or any other movement, would lose the ability to hide behind the Bankruptcy Code.

It would apply equally. It did apply equally to pro-life extremists and ecoterrorists, one on the far right and one on the far left. Indeed, if militants in the pro-choice movement should block a facility that was pushing abstinence, it would apply to them, too. If violent atheists blocked access or burned down a church, it would apply to them. It applies to anybody who uses violence and then seeks protection of the Bankruptcy Code.

This amendment is not about abortion, as its critics attack it. It did have its origins there because that is where violence was used, but now, after the Schumer-Hatch compromise, it is an amendment simply about the rule of law, something everyone of any political party, of any political belief who is an American--when you swear your loyalty to the Constitution of the United States, you are basically swearing loyalty to the rule of law.

Let me underscore this: It does no harm, none, not 2-percent harm, not 1-percent harm, not .1-percent harm; it does zero harm to legitimate protesters who do not engage in violence or threats of violence. The amendment expressly states that "nothing in this provision shall be construed to affect any expressive conduct, including peaceful picketing or peaceful demonstration, protected from legal prohibition by the first amendment to the Constitution of the United States." If you protest peacefully, you are protected. If you use violence or the threat of violence, you are not. That is the American way, and we made it clear.

People who are against this amendment say it stands in the way of peaceful protests. I ask them to cite me a single example where that has happened. It has not.

This was a fair amendment. It applied to anyone who used violence to effect their means and, in overwhelming numbers, Democrats and Republicans supported it. Virtually all of my Republican colleagues now on the Judiciary Committee, including some leading pro-life Senators, supported it--Senators **HATCH, GRASSLEY, KYL,** and **SESSIONS**. I take off my hat to them. They were being fair. I am sure they received a little pressure: Don't do this. Maybe there were some winks: Hey, maybe this violence is OK because we feel so passionately about an issue. But they stood up. To their credit, these Senators, even though they are staunchly pro-life, were reasonable and sensible about the issue.

Then on March 15, 2001, a bankruptcy bill, largely identical to the one before us today, except that it had the Schumer-Reid-Hatch language in it, passed in the Senate by a vote of 83 to 15. Only two Republicans voted against it, and that was for reasons other than this amendment.

Then, of course, the bill was sent to the House. It looked like as if would pass. I supported the bill with this amendment in it. I have always said I will be for the bill with this amendment because I think this amendment is so important, even though I am not happy with other provisions in the bill. I am, frankly, less happy today with the other provisions in the bill.

The bill was sent to the other body, and a fight ensued within the Republican caucus. A large number, probably a majority of the Republican caucus, wanted to support the bill, but a small number who were the most fervent in their pro-life beliefs said no bill. The Republican leadership in the House said since this divides our caucus, even though a vast majority of the House would have supported the legislation, in my judgment, they pulled the bill.

So now we are back to where we are today. We have basically the same compromise as last year but without the Schumer-Hatch compromise. All I am doing today is adding that compromise word for word. Again, not a comma, jot, or tittle has been changed in the bill.

I have watched while amendment after amendment offered by Democratic Senators to end abuses and close loopholes has been beaten back because of an edict that this ``negotiated compromise"--not negotiated certainly with many of us on this side--should be delivered pristine to the House.

Republicans defeated an amendment to protect veterans because it was not part of the compromise. That was offered by the Senator from Illinois, Mr. *Durbin*. For example, a National Guard man or woman, a reservist sent overseas does not make the same money they made before, and maybe they have to go into bankruptcy. Do we want to come down like a hammer on these people the same as we would come down on somebody who squandered whatever money they had in Las Vegas gambling? Absolutely not. But the amendment was defeated.

There was an amendment that was defeated to protect victims of identity theft. I believe that was done by my colleague from Florida, Senator *Nelson*, because it was not part of the compromise.

Senator *Kennedy* has eloquently spoken of those who have to go into bankruptcy because they do not have adequate health insurance or any health insurance, and they are putting their every last nickel to save their husband or their wife or their mother or their father or their child. Again, no protection.

An amendment I offered which said millionaires could not abuse the code by setting up a trust and putting all their assets in this trust and then declaring bankruptcy and shedding themselves of debt also was not allowed because of the compromise.

Mr. President, do you know what was part of the original compromise? The Schumer-Reid amendment or, more correctly, the Schumer-Reid-Hatch amendment. Yet this provision was stripped from the current bankruptcy bill.

If Senator *Hatch* continues to suggest we should honor the grand compromise from last time and not change it, then let's do it for everybody. Let's not just take out this provision.

What, I ask, has changed since the bill of this language passed by a vote of 85 to 13? Absolutely nothing. It was a good law then, it is a good law now. On what basis can my colleagues now oppose the Schumer-Reid amendment because it targets, among others, those who take the law into their own hands to oppose a woman's right to choose? That is nonsense. Senator *Reid* is the lead cosponsor of the amendment, and he is pro-life. And as I have said, the language is not particular to abortion.

Let me ask my Republican colleagues a question. I hope they are listening: Would my Republican colleagues oppose a broadly worded murder statute because, among other things, prosecutors could bring charges against someone who killed a doctor who would provide abortion services? Would they oppose a neutrally drafted arson statute because men and women who burn down health clinics might come under its ambit?

There is no moral reason, no legal reason, no logical reason, for Senators who once overwhelmingly supported this language to now oppose the Schumer-Reid amendment. Some of my colleagues have said they are still in favor of this amendment but do not want the entire bankruptcy bill to be held up because of it. My purpose is not to hold up the bankruptcy bill, and I think my colleagues on the other side who worked with me over the years on this bill understand that. My purpose is to preserve the rights of those who seek to do constitutionally protected acts in the face of violence.

So I ask my colleagues to please think about what they are doing. If they vote against this amendment, they are voting against the rule of law. If they vote against this amendment, they are voting against the fundamental way we do things in America. If they vote against this amendment, many of my colleagues are voting exactly the opposite of what they did a few years ago. I ask my colleagues not to change their vote because of political expediency. If my colleagues turn their back on this amendment now, it will be a turnaround, an about-face, on fairness, on reform, and on bipartisanship.

As I have said, this is not pro-choice or pro-life. It is pro rule of law and it is antiviolence. No matter how strongly people feel--and I respect people's passions; I respect their passions whether they come from religion or politics or anything else--the greatest danger our Republic faces is apathy, so people who feel passionately are good. Because someone feels passionately, they should not be allowed to take the law into their own hands and then hide like a coward behind the bankruptcy law.

Just as we are trying to end the abuses of the bankruptcy law when it affects banks, we should also end abuses of that law when it affects victims of violence. It is vital that we make the law perfectly clear that debts incurred by violent extremists who take the law into their own hands are nondischargeable, and that is all this amendment does, no more or no less. If we do not, individuals and organizations seeking to shut down public facilities, whether they be clinics, powerplants or animal laboratories, will continue to force victims of clinics and other violence into a world of perpetual litigation by using the Bankruptcy Code as it was never intended.

I ask my colleagues to support this amendment. Most of them did once and they should do so again.

I reserve the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, my colleague from Alabama is in the Chamber. I was going to ask that the time be equally divided as we were in the quorum call and not charged to myself, but if my colleague from Alabama is taking the time, then that is moot.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I thank the Senator from New York. As someone who has worked hard on this bankruptcy legislation for the 8 years I have been in the Senate, I have learned a political lesson that no matter how much bipartisan support a bill has, how much momentum it has, how needed it is, things can go awry.

In the last passage of this bill, Senator *Schumer* offered, and aggressively argued, for the amendment that we are debating today. The leadership on this side of the aisle said, OK, we will accept it. I realized that it was problematic for a number of reasons. I opposed the amendment, but it passed, and without a whole lot of objection, I suppose, from this side. The truth is it then became the single factor in the House's rejection of the bankruptcy bill, a bill that passed this body by a vote of 83 to 15. It was really a remarkable sort of event.

Let me just say a few things about the bankruptcy procedure. It has long been a fundamental principle of bankruptcy that while a bankrupt individual may bankrupt against their lawful debts, wipe them all out, and pay none of those debts, it has always been the law that a bankrupt may not discharge, may not wipe out, erase the debts that they incur as a result of intentional or willful misconduct.

If a debtor lists debts that arise from an intentional wrong against someone, the trustee in bankruptcy or a creditor or any of the creditors can object to that discharge, and they would note that it should not be wiped out, it should not be discharged, because it is a debt that arises from a willful, wrongful act.

The court then considers that and determines whether or not the debt should be wiped out and whether or not it was a debt that arose from a nondischargeable reason like willfulness.

Senator *Schumer's* amendment says that willful violators of abortion clinic protest prohibitions, and really a lot of other protestors, it appears to me--maybe unions, civil rights, environmental, I think he has said that they are covered here--he says that if willful violators of abortion clinics and these others included in his bill are sued and a judgment is rendered against this protestor under Federal law, then automatically those judgments are not subject to discharge; the court does not review it; they remain a debt of the protestor for their life, and they can be pursued by collection attempts for as long as that debt exists, and it can be for some time.

What we do know is this: Abortion clinic protestors have been sued for misbehavior at abortion clinics under the FACE Act. Some of these people have been relentless in their

actions and have acted repeatedly in violation of law, and they have been sued. Judgments have been rendered against them. Most of them do not violate the law. As the Senator has said, the archbishop prays the rosary and conducts lawful acts, demonstrating his concern over the taking of what I consider to be life by the abortion act, and this is a free country and they are allowed to do that. But there are certain things that one cannot do in that protest, and a number of people in the past, a lot more than is currently happening, frankly, violated those prohibitions of the FACE Act. They have been sued and judgments have been rendered against them.

We also know that some of those protestors who had judgments rendered against them went to bankruptcy court and sought to wipe out their debts and not pay these debts for their protests, to discharge them from bankruptcy.

Finally, we know that under the current law, and under the law that is in the bankruptcy bill that is moving forward today, it has not changed on this point. That law prohibits the discharge of debts arising from willful acts. In every single case that the courts have considered petitions for discharge, in these abortion FACE Act violation cases, the bankruptcy court has refused to discharge the debt.

They say, no, it was a willful act and you cannot discharge it; you still owe it. And the abortion clinic plaintiff or doctors or whoever is victimized can continue to pursue collection wherever they go. They can file garnishments against people's wages, file judgments against their property and pursue them aggressively and steadfastly to collect that debt. That is what the law has said every single time, and there is not much dispute about that. I do not think the Senator from New York would dispute that.

By his amendment, the Senator from New York, because of his concern over these very few cases, frankly, but he is concerned about it and has raised the issue a number of times, has managed, as a result of his successful passing of that amendment on this Senate floor 2 years ago, to cause the bankruptcy bill and all of its important parts to actually die and not become law because the House refused to accept it. Because of his concern, I know he has offered this again.

What he would want to say, and what his amendment says, I think fairly stated, is that a protestor and not just abortion clinics but any number of protestors who are sued under Federal law, and a judgment is rendered against them, Senator *Schumer* would want to make that judgment automatically not dischargeable, automatically without review by the court or any examination of the facts of the situation, to say it should not be discharged and will remain a permanent debt of the protestor.

I know the Senator said we all voted for this and there was some sort of agreement. I really do not think there was an agreement about this. As I recall, it came up in the Judiciary Committee. Chairman **HATCH** was trying to move the bill forward, as he frequently does, and allowed it to become accepted by a voice vote without any big to-do. It came up to the floor and was debated again, and a decision was made that we would just allow it to pass. It was not that big a deal as people saw it at the time.

I opposed it. I did not feel good about targeting these kinds of cases. I thought that the current law was acceptable and we should not go in this direction, but it passed and I voted for final passage of the overall bankruptcy bill. So I think that is why the Senator says I and others voted for it. A lot of people voted for the bill on final passage that may not have voted for the amendment on the floor.

Regardless of that, the question is, now what should we do? I would just note that there are a number of reasons why I think this should not be a part of the bill. First, as I have noted, these protestors have lost every single case in which they have sought to discharge debts arising from judgments under the FACE Act. The current bankruptcy law and this bill will say flatly that such debts are not dischargeable if the injury is the result of a willful, malicious act, as these violations for the most part are.

So, first, it is not necessary, and I would again note that the bill covers more than just abortion protestors. There could be any number of protestors. I think about the situation where maybe somebody from Alabama goes up to the southern district of New York and gets sued up there and a big judgment is rendered against them for taking a position unpopular in New York or maybe, as has happened in the past, people from New York have come down to Alabama and have been involved in protests and could have judgments rendered against them in local courts. So the Senator would say that under no circumstances, when that judgment were to appear on a discharge petition in bankruptcy court, would the court have any authority to look behind it. This Federal bankruptcy judge would have no authority to look behind this judgment to see if it was willful or intentional as the current law and the law has always been in bankruptcy, to my recollection, pretty much from the history of bankruptcy law. He would not look behind it and he would decide automatically it is a judgment not dischargeable. I am not sure that is good policy.

I am not sure we want to do that. As a matter of fact, I do not think it is. I think the current law works. We should not do this. The Schumer amendment is bad policy. I disagree with it. I do not think it is the biggest deal in the entire world, but I think under the legal system and the principles of this bill, we would be better off allowing the bankruptcy court to consider these debts and examine them to make sure they meet the standards of discharge.

There is a big practical reason. This bill has passed the Senate four times by an overwhelming vote. One time I think it was 97 to 1. It has been marked up in the Senate Judiciary Committee four times, and it has not been lightly considered on the floor of the Senate. It has been the subject of hours and hours and days of debate. We are already into the second week on this bill. After all the debate and all the hoopla we have had, and so many other issues, we continue to pound away at this legislation for reasons that I am unable to fathom. But we are moving forward. I believe we will pass it again.

What is the practical reason? The House of Representatives rejected this bill the last time for the sole reason of the Schumer amendment. It is unbelievable. As much as we had in this bill, all the pages of this legislation, one little amendment killed this

legislation, an amendment that I believe is bad policy, certainly not necessary, and I submit could result in killing this legislation again if we move it forward.

So let's not do it. Let's not do this. Let's not go beyond the bill that we have now, that came out of the Judiciary Committee with a bipartisan vote, an overwhelming vote out of the Judiciary Committee to come to the floor without the Schumer amendment in it. Let's not add this amendment and jeopardize the passage of the bill.

Let's not add this amendment and perhaps take a step, I submit with all seriousness, that could curtail protests and freedom of expression in America. Sure the protesters have lost every time. I believe they should have lost every time under the law. But there may be some times, under some of these provisions of Federal law, that could result in judgments that legitimate protesters were simply standing up under hostile circumstances in a hostile jurisdiction for what they truly believe in, and then the bankruptcy judge has no ability whatsoever to prohibit this judgment from sticking against them perhaps for the rest of their lives.

I don't know.

I don't think the law is failing in this regard, and I do not think the law is being abused in this regard. I think it is being handled well. We do not need this amendment for the reasons I stated, and for other reasons, frankly, that I will not state at this time.

I urge the rejection of the Schumer amendment and note with pleasure that Senator *Hatch*, the former chairman of the Judiciary Committee, now a senior Republican member of it who has worked on this legislation since the beginning, is on the Senate floor. I am pleased to yield to him.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the remarks of my colleague. As usual, he has done a very good job in outlining what is involved in this bankruptcy bill, and I believe he deserves a lot of credit for the hard work he has done on the floor.

Mr. President, comes now the Schumer amendment or, should I say, comes again the Schumer amendment. I rise to speak in opposition to this amendment. Been there. Done that. In fact, I have been there and done that a few times.

I have been around here long enough to know a poison pill when I see one. And make no mistake about it, this has become a classic poison pill amendment.

I have worked in good faith for several years to attempt to neutralize the effects of this amendment. But no matter how we try to adjust the language, we cannot overcome the

basic flaw in the amendment: The Schumer amendment is a solution in search of a problem.

I oppose this amendment. It is no secret that I am genuinely fond of the senior Senator from New York. While I frequently disagree with him on issues, I respect enormously his political skills.

Even when from my perspective he is wrong--such as the leadership role he has played in organizing the first permanent filibusters of majority-supported judicial nominations--I know that he always tries to act in a heartfelt manner that advances his political agenda.

We have been able to achieve compromises on many issues over the years. Senator **SCHUMER** and I have worked together on many crime issues. For example, we have worked on language pertaining to the designation of high-intensity drug trafficking areas.

Over a period of years we have tried to work together on the subject matter of the pending amendment to the bankruptcy bill. I have always been willing to work with him and others in the interest of passing the bankruptcy reform bill.

From the beginning of this debate, many others and I have long contended that his amendment is unnecessary on its own merits. The amendment which we consider today appears to seek to guarantee the collection of civil and criminal penalties arising from criminal violations of the 1994 Freedom of Access to Clinic Entrances Act. The purpose of the Schumer amendment is to make clear that those who are fined due to attacks on abortion clinics are prevented from being able to discharge these fines and civil judgments resulting from such attacks through bankruptcy proceedings.

My friend from New York has pushed a hot button. He must know that. Injecting the polarizing politics of abortion into the bankruptcy bill, most would have to agree, does not appear to be calculated to help the passage of the bankruptcy bill. Quite the opposite, the Schumer amendment has become a wedge issue that has stopped the bill in the past and, today, can threaten the passage of this important bipartisan bill that enjoys broad bicameral support.

I urge my colleagues to vote against the Schumer amendment. Let me first explain my substantive objections and then I will describe my procedural, pragmatic, and political concerns with the Schumer amendment.

At the outset, it should be understood that in its best light the Schumer amendment is a belts-and-suspender proposition that attempts to solve a problem which, as far as I can tell, has never actually occurred.

We have been debating this bill for 8 years, and I am still unaware of any actual case in which a person who has been fined for harming a person or property in connection with any unlawful protests against, or attacks on, abortion clinics, has had any subsequent fines or financial penalties discharged through bankruptcy. At our markup of this

legislation in February of 2001--more than 4 years ago, Senator Schumer said in justification of the amendment:

..... this is a vital amendment. I am not going into all the details I will not catalogue them except to tell you that when Maria Vullo testified and anyone else did, they said without the Schumer Amendment we would go back to the days before 1994 when the clinics were closed by some who had felt that they were more moral than the rest of us.....

Certainly that prophesy has not come to pass in the 4 years subsequent to the time that Senator

SCHUMER made that statement back in 2001.

I am unaware of a systemic shutdown of the network of abortion clinics in this country over the past four years. Nor am I aware of any evidence of the use of the bankruptcy code as a mechanism of escaping financial responsibility for acts of violence against abortion clinics or their personnel, or for that matter, any other criminal enterprise.

The reason for this outcome is simple: Current law prevents such an outcome. Section 523(a)(6) of the bankruptcy code already prohibits the discharge of debts through willful or malicious injury to a person or property, and section 523(a)(12) makes restitution orders resulting from a criminal conviction nondischargeable through bankruptcy.

Nothing in this bill changes these provisions in the law. Moreover, a growing body of case law confirms the adequacy of these provisions when it comes to enforcing judgments arising from FACE Act violations.

In Behn v. Buffalo GYN Women Services, a 1999 decision in Federal bankruptcy court in Senator **SCHUMER**'s home State, the court rejected an attempt to discharge a civil award debt resulting from an abortion protest.

So it was rejected.

In Bray v. Planned Parenthood of Columbia/Willamette, decided in 2000, a bankruptcy court in Maryland rejected the attempt to discharge debts resulting from an Oregon case in which a Web site produced by anti-abortion extremists threatened the lives of those working in these clinics. The 2001 Treshman decision in a Maryland bankruptcy court confirmed that such actions will not be tolerated by permitting discharge of restitution or judgment through bankruptcy.

Randall Terry, the founder of Operation Rescue, is living proof of the adequacy of these laws. His Web site now solicits contributions after he was completely bankrupted as a result of actions found to be violative of the FACE Act.

From a purely legal perspective, it seems fair to say that what we have here is a solution in search of a problem. This is actually confirmed by the most recent testimony of my colleague from New York's star witness on this subject, Maria Vullo.

Way back when this amendment was first suggested back in 1998 or 1999, several cases were still pending. But now these cases have been resolved. And in every instance, the courts have refused a discharge of these debts.

In answer to a question of Chairman **SPECTER** in connection with the Judiciary Committee's last hearing on bankruptcy reform, held only 3 weeks ago, Ms. Maria Vullo acknowledged that she was ultimately successful under current law in all six bankruptcy courts where she acted to help prevent such improper bankruptcy discharges of abortion clinic-related fines.

There you have it. The primary litigator in these cases testified that she has won in all of her cases under existing law. This should help lead us to the conclusion that there is no compelling legal reason to change the law. There is an old saying: If it ain't broke, don't fix it.

We are not talking just belts and suspenders, we are talking belts, suspenders, *and* an elastic waist band. Discharges related to FACE Act violations have not been permitted under current law.

Our laws are clear. We discourage, prevent, and punish abusive filings, including those related to those offenses that occur in connection with abortion clinics. Again, to my knowledge, there is a complete absence of cases demonstrating the problem that this amendment seeks to address. This is not surprising.

Our bankruptcy laws already act to prevent, have prevented, and will act in the future to prevent precisely the problem that Senator **SCHUMER** is worried about, but cannot, it appears, document. The truth of the matter is that, on the merits, this is just an unnecessary amendment. Yet this amendment has already scuttled bankruptcy reform on two occasions.

In 2000 essentially the same bankruptcy bill passed this body with 83 votes and then 70 votes. It was vetoed by President Clinton in the waning days of his second term for failing to include this amendment. Then in the 107th Congress, the House of Representatives rejected even a twice-amended--and moderated--Schumer amendment.

Now that it is clear that the courts will not discharge these debts, the proponents of this amendment have slightly but subtly changed their tune. Now the alleged issue of concern is that some will nevertheless continue to attempt to discharge such fines and penalties--that is, sometime, some place, someone will try to use the bankruptcy code to shield illicit acts involving attacks on abortion clinics.

Some argue the amendment is justified on the supposed need to codify the general prohibition of section 523(a)(6) against discharging debts accrued in connection with willful or malicious injury to a person or property with a special provision of law geared solely toward abortion clinic-related violence. The fact is, however, current bankruptcy law, along with the ever growing body of precedents on this subject, make it clear that attorneys will not be inclined to make these frivolous and abusive filings in the future.

Rule 9011 of the Federal Rules of Bankruptcy Procedure already allows sanctions against attorneys who participate in submissions to delay proceedings and needlessly increase the cost of litigation. It says a frivolous action without evidentiary support can be punished. I guess it is true that particular bankruptcy courts may sometime in the future eventually be faced with a filing by someone asking for improper discharge of debts, but that is just the nature of litigation within the bankruptcy system and the American system of justice.

Having the right to bring a claim in our system is very different from winning that claim. For each case that goes to trial, there is a winner and a loser. Trying to get around the bankruptcy code and case law precedents in the manner feared by supporters of the Schumer amendment is a losing case under current law.

Courts decide cases on the basis of the law and the particular facts in front of them. That bankruptcy courts will have to undertake their normal and traditional role of reviewing all relevant aspects of individual filings that may, or may not, include these improper and unsustainable claims related to abortion clinic damages is hardly a grave injustice.

And for what it is worth, the success of the FACE Act and the decisions of bankruptcy courts that hold those debtors to account appears to have resulted in an ever dwindling number of judgments that must be litigated.

This is an issue that is being overhyped.

The current statutes are clear.

The case law is clear.

The paucity of evidence of such claims for abortion clinic-related violence and injuries being routinely, or even infrequently, made in bankruptcy proceedings, reflects the fact that the word is out that the statutes and case law already prevent the problem that the Schumer amendment allegedly solves.

Moreover, I would like to add that section 319 of this bill expresses the sense of the Senate that all signed and unsigned documents submitted to a bankruptcy court must be preceded by a reasonable inquiry to verify that this information is well grounded in fact and warranted by existing law or based on a good faith argument for an extension, modification, or reversal of existing law.

I am hopeful that this sense-of-the-Senate provision will help spread the word even further.

When the Schumer amendment burst upon the floor in 2000, I worked in good faith to make this questionably meritorious issue more palatable to Members on my side of the aisle.

In particular, I wanted to help alleviate the concerns of those who, as I, hold strong pro-life views. We are sensitive to the fact that the original Schumer amendment could reasonably be interpreted as affecting first amendment rights to protest against what we believe is the unjustifiable practice of abortion.

It is my recollection that the original Schumer language back in 2000 also addressed attempted or alleged harassment, interference, and obstruction. Many believed that this language was way too broad and could have potentially implicated the actions of peaceful anti-abortion protestors who were simply exercising their freedom of speech.

Nevertheless, for a variety of reasons, mostly political rather than legal or policy, the Schumer amendment was accepted. One of the key factors was that it appeared to some at the time that the amendment was offered in part to give then-Vice President Gore an opportunity to possibly cast a tie breaking abortion vote during the Presidential election year of 2000.

I cannot say for certain that this was the case. But if it was, it probably would not have been the first time that Presidential politics played out on the floor of the Senate.

Before the February 2, 2000, vote on the Schumer amendment, I said the following on the Senate floor:

Although I believe this amendment to be tremendously flawed, the majority leader, Senator Grassley, and I recommend that Members on both sides vote for this amendment. We will, in good faith, in conference correct the amendment and resolve these problems at that time. With this amendment accepted, nobody will be able to demagogue this issue politically in the context of true bankruptcy reform. We pledge to work with our friends on both sides of the aisle who are interested in this issue during conference to make sure the law is clear, that the due respect for the first amendment, and debts arising from violent acts cannot be discharged in bankruptcy.

This is hardly a ringing endorsement and certainly nothing near an absolute commitment to retain this language at any cost or contingency.

Nevertheless, in the 106th Congress the bankruptcy bill, with this flawed language, passed the Senate with 83 votes.

Eventually during the House-Senate conference committee the Schumer abortion clinic-specific amendment was not contained in the conference report. The bankruptcy

legislation, without the Schumer language still passed the Senate with a strong bipartisan 70 votes.

Unfortunately, President Clinton then pocket vetoed the bill passed by both the House and Senate.

Early in the 107th Congress, I worked with Senator **SCHUMER** on compromise language that moved away from the incendiary abortion clinics-specific language to a more general and neutrally-phrased provision related to "lawful good and services." This provision was adopted by a unanimous voice vote of the Judiciary Committee on February 28, 2001.

I would note for the record that despite this compromise, Senator **SCHUMER** voted against the bill on final approval in the Judiciary Committee.

On July 17, 2001, this bill passed the Senate by a vote of 82-16.

The House-passed version of the bankruptcy bill in the 107th Congress once again did not contain comparable language. I might add that the House passed its bill by a strong bipartisan vote of 306-108 on February 26, 2001.

At this point Senator **SCHUMER** and I worked with Representatives **HENRY HYDE** and **JOHN CONYERS** and others to fashion an acceptable compromise.

This compromise was rejected.

Frankly, at the time, I would have preferred that the compromise be accepted and this already overdue bill be signed into law.

However, I can well understand the frustration of many of my colleagues in the House being asked to adopt a watered-down version of an amendment without meaningful legal effect derived from the inflammatory original version of the Schumer amendment that addresses a problem that apparently does not exist in the first place.

Rather than go down this fruitless road again, I ask my colleagues to vote down the Schumer amendment for once and all.

Not only is it unlikely that the House will accept it, the Senate should not accept it either.

One important difference from the situation of 3 and 4 years ago is that we now have, as I discussed earlier, a more definitive picture of how the courts will interpret the application of section 523(a)(6) in the context of abortion-clinic related claims.

In short, the courts have not and will not allow fines or judgments stemming from the willful or malicious injury to a person or property to be discharged in bankruptcy whether

they arise out of illicit actions against abortion clinics that violate the FACE Act, or, for that matter, any other of the literally dozens of other injuries that can be conjured up relating to willful or malicious injury to a person or property.

No one would, or should, take seriously any amendment that purported to state explicitly that fines or judgments incurred from yelling fire in a crowded theater could not be discharged through bankruptcy.

Nor should we support the Schumer amendment when we know it is both unnecessary and divisive.

You do not have to be pro-life to be against the Schumer amendment. You just have to conclude that 8 years is enough time to have worked on one bill that has repeatedly engendered broad bipartisan support.

And to hold up this legislation once again over an incendiary, extraneous, redundant poison pill amendment is just not right.

I always try to seek a compromise or accommodation with my colleagues whenever it is productive to do so and consistent with my principles.

In this case it is simply not possible to do so in a productive manner absent any sign from the House that its Members are receptive to such a compromise.

Having worked on this issue for several years, I have reached the conclusion that the inherent volatility of the subject matter of the original Schumer amendment has made it nearly impossible to arrive at a neutral language resolution to this undocumented problem at this time.

Moreover, the well-known by now impasse over the acceptability of compromise language is compounded by the simple fact that there is, to my knowledge, no compelling evidence that there is a problem requiring a legislative fix.

To a certain extent, this is an exercise that demonstrates why it can be harder to fix a hypothetical problem than a real problem.

Frankly, that we would even be considering an amendment based on the 2001 Judiciary Committee markup language, rather than the revised 2001 conference report language, hardly seems like a step in the right direction. To use an expression that my friend from New York sometimes uses himself, reverting to the earlier language may seem to some a bit like a poke in the eye.

I suspect that this is unintentional on the part of my friend from New York. I wish we could have worked this out, and I thought we did work it out.

But as I look at all the facts and circumstances, including the developments in the actual cases brought and decided over the last few years, I can only conclude that there is even stronger evidence today than there was in 2000 and 2001 that this amendment is simply unnecessary.

While I attempted in good faith to resolve this problem 4 years ago, time seems to have proven that those I who looked askance at this compromise in the first place were correct in their assessment of the lack of necessity for this amendment.

I ask my colleagues to oppose the amendment of my distinguished friend from New York for these reasons. It is important that we get this bankruptcy bill finished. It is extremely important that we get it done. If this amendment is added, it isn't going to get done again, and we will be in the ninth year next year, frankly, probably 2 years from now because we will never get what really has to be done in the best interests of bankruptcy reform.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I would like to ask my colleague a question, but, first, I will make a couple of points.

First of all, nothing has changed since we all supported the Schumer-Reid-Hatch amendment of a few years ago. The basic purpose then was not to make sure that cases in bankruptcy court did not come out on the side of those who were victims of violence. It was just impossible to pursue the claims of bankruptcy.

My good friend from Utah cites Maria Vullo. She is a successful lawyer in New York who donated her own time which she estimated at one of our hearings to be worth over \$1 million. She believed passionately that those who used violence should be stopped. Not every clinic has it. And, of course, if you go through the bankruptcy proceedings, you will win. Clinics don't have the ability to do that; first, to fight in court on the issue of violence and then to go back to the bankruptcy court.

I say in all due respect to my good friend from Utah, he knew that then, and he knows it now. It is the same issue. The very issue that he says we don't need this law was brought up in 2000 and 2001. My good colleague was then good enough to admit we did need the law even though we couldn't find cases, and even though there were no cases in bankruptcy court where the Randall Terrys of the world prevailed. You would never have the successful suit.

That is why these fanatical groups are insisting that bankruptcy be used.

I make another point to my colleague. If the amendment is unnecessary now, why wasn't it unnecessary then?

I make this point to my colleagues: The merits have not changed. Exactly the situation that prevailed in 2000 and 2001 prevails in 2005.

What has happened is people have done a 180-degree about-face because of a small group in the House who do not represent the mainstream views of the House or of even the Republican Party in the House but who have insisted on not going forward with a bill with this worthy amendment in it. An amendment that was praised, a compromise that was hailed a few years ago is every bit as valid today as it was then.

I know it is difficult and awkward for people to say, well, never mind, but we cannot let this issue just die. The rule of law is too important. Fairness is too important. What is good and beautiful about America is too important.

We will ask our colleagues to stick with their convictions that they have had over the last few years and not do an about-face simply because a small group of industry leaders says we must have this bill no matter what.

Senator *Hatch* spoke for a long period of time. I wanted to rebut him. He did not want to do it on his time.

The PRESIDING OFFICER. The Senator from New York does control time. The Senator can yield time to the Senator from California, but in doing so the Senator will lose his right to the floor.

Mr. SCHUMER. I yield 10 minutes to my friend and colleague from California, and cosponsor of this legislation, Senator *Feinstein*.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from New York.

We are both members of the Judiciary Committee. We had an opportunity to discuss and debate this amendment in the Judiciary Committee.

Senator *Schumer's* amendment is a critical amendment. Essentially, when this body in 1994 passed the Freedom of Access to Clinic Entrances Act, we said that individuals should be able to go into clinics without being obstructed. The law was very clear.

The law also has led to successful criminal and civil judgments against groups that use intimidation and outright violence to prevent people from obtaining or providing reproductive health services.

This law would be seriously damaged if we do not close this loophole that has allowed some antiabortion extremists to use bankruptcy to shield their assets. The Senator from New York mentioned the founder of Operation Rescue, Randall Terry, who said in 1998 after filing for bankruptcy:

I have filed a chapter 7 petition to discharge my debts to those who would use my money to promote the killing of the unborn.

In my home State of California there was a similar incident involving a man by the name of John Stoos and several other people in 1989 who were sued by the operators of a Sacramento abortion clinic for allegedly blocking the clinic's entrance and harassing patients. A judge ordered Stoos and others to pay nearly \$100,000 in attorney's fees incurred by the clinic. As a result, Stoos filed for personal bankruptcy, listing that debt among many he could not pay. These actions are clear evidence of abuse of the bankruptcy system. This bankruptcy bill should stop them.

I hope the Schumer amendment would be accepted by this Senate.

Let me use this time to speak a bit more generally about this bill. I voted for this bill when it left committee. I have decided to vote against this bill in the Senate. I want to say why. In committee, we were asked to withhold all amendments to the floor. We knew the bill was not a perfect bill. We have seen it improved over the years. We knew it was better than the House bill. And with all complicated, difficult bills, the tradition of the Senate has always been the floor debate and discussion. In a majority of times as a product of floor debate and discussion, problems in the bill can be remedied.

We knew there were problems in the bill. For example, I have an amendment which I have withdrawn which says that the credit card companies should, in fact, notify a minimum payer how long it would take that payer of a credit card, if he only paid the minimum amount of interest, to pay off the debt. Senator *Akaka* had a similar amendment. It was summarily defeated. I had an amendment; I had two Republican cosponsors. I learned it would also be summarily defeated. Thanks to Senator *Shelby* and Senator *Sarbanes*, the Banking Committee has taken an interest in this and in the future and will take a look at it.

Nonetheless, the fact of the matter is this bill is all for the credit card companies. I know there is credit card fraud. I know that has to be met. I felt the bill was important to pass. However, I also felt the bill should be balanced and that we should see that the consumer is also protected in this process, protected with notice of what a minimum payment means, and also, frankly, protected against high interest rates.

Senator *Dayton* moved an amendment which would limit interest rates on credit cards to 30 percent. The amendment was summarily defeated. The fact is with penalties, with other charges, with high interest rates--and many companies have interest rates, believe it or not, well in excess of 30 percent--a minimum payer cannot ever pay the full debt because the interest on the debt, if combined with certain penalties and/or fixed payments, becomes such that it overwhelms the principal. Many people do not know that.

The fact is 40 percent of credit card holders pay off their debt every month; 40 percent make only the minimum payment; and 20 percent are kind of 50/50 in that category. For those 60 percent who are generally people who are not as informed, not as able to pay

back their bill, who may have one, two, three, four, five, six different credit cards, because this is a credit economy, credit card companies have been able, with very little interest to the payer of the debt, to solicit huge fees, penalties, and interest rates. This is plain wrong.

If we are unable to correct it, which I had hoped would be corrected by these amendments that have been presented, I cannot vote for this bill as long as these gross injustices remain.

Let's for a moment look at the 30-percent interest rate. It is very high. Inflation is about 2 percent. The interest rate on 3-month Treasury bills is 2.75 percent. The national average lending rate on a 30-year mortgage is 5.59 percent. Yet an amendment to limit interest rates on credit cards to 30 percent went down dramatically.

I mention there are companies that are charging high annual interest rates. Some charge 384 percent, 535 percent. Amazingly, one Delaware-based company has charged 1,095 percent, according to the Minnesota chapter of the National Association of Consumer Bankruptcy Attorneys.

The Washington Post, the Los Angeles Times, other major newspapers have pointed out where fees, rates, and charges have buried debtors. They have pointed out a multitude of cases. A special education teacher from my home State worked a second job to keep up with \$2,000 in monthly payments. She collectively went to five banks to try to pay \$25,000 in credit card debt. Even though she did not use her cards to buy anything else, her debt doubled to \$49,574 by the time she filed for bankruptcy last June. Effectively, interest payments are half of the debt. She will never be able to pay that off.

To push people like this from chapter 7 into chapter 13, when what is the problem is interest rates and penalty fees that truly do victimize an unsuspecting individual-how could this Senate do that, if someone is going to charge a 100-percent interest rate?

One of my own staff members found that simply getting a credit card cash advance resulted in an immediate 3 percent fee which was simply added to the interest rate.

The result is even the most careful credit card users find themselves often swamped, particularly those who can only afford to make a minimum payment, and the fees, charges, and interests pile up, making it virtually impossible to ever pay off the debt.

This amendment would have been a meaningful addition to the bill. It certainly would have added fairness. It certainly would have sent a signal to credit card companies that the sky is not the limit. Yet it was defeated.

Senator *Schumer's* asset protection trust, of which I was a cosponsor, was another indication of where wealthy people could shelter assets and not have to pay back in chapter 13. These are some of the inequities.

In recent years a number of financial and bankruptcy planners have taken advantage of the law of a few States to create what is called an "asset protection trust." These trusts are basically mechanisms for rich people to keep money despite declaring bankruptcy.

They are unfair, and violate the basic principle of this underlying legislation--that bankruptcy should be used judiciously to deal with the economic reality that sometimes people cannot pay their debts, but to prevent abuse of the system.

This loophole is an example of where the law, if not changed, permits, or even encourages, such abuse.

The amendment was simple. It set an upper limit on the amount of money that could be shielded in these asset protection trusts, capping the amount at \$125,000.

The bottom line: Without this amendment, wealthy people will be able to preserve significant sums of money in an asset protection trust, effectively retaining their assets while wiping away their debts.

The proposed cap amount, \$125,000, is not a small sum. It is more than enough to ensure that the debtor is not left destitute. I believe it is a reasonable amount--it is deliberately based on the now-accepted \$125,000 limit for the homestead exemption, which will also remain available to a debtor.

I would also like to say a few words about my concerns about what appears to be a new policy in the Senate.

It appears that the Republican leadership has decided that rather than honoring the 200 plus year tradition of the Senate as a deliberative body, the Senate should be run like the House of Representatives. There appears to be a new process being implemented in which the Senate should no longer seriously consider amendments on the floor to improve bills.

We are now in the middle of the second major piece of legislation where the majority has decided that amendments by the minority will be rejected wholesale regardless of the merits.

It appears that even when serious problems in the underlying legislation are raised and even when the Republican leadership agrees that the problem exists, amendments offered by the minority will be rejected.

In fact, when the Judiciary Committee was marking up the bill, Senators were asked not to offer amendments and instead offer them on the floor. Statements were made by the Acting-Chairman like, "I know we are going to go through this on the floor and I don't see any reason to keep us here all day and all night"; and, "[You will] have every opportunity to present these amendments on the floor."

Yet, upon reaching the floor, Senators have found that their amendments are not being considered on the merits.

It is the Senate's job to carefully debate, carefully consider, and pass the very best laws we can. But now the Senate is being asked to simply pass legislation as drafted, regardless of its content.

This lack of consideration and care does a disservice to the Senate and to the Senators who work hard to reach compromises and find common ground. But more importantly, it does a disservice to the American people.

We are here to develop the best policy we can, not to simply play political games and jam through legislation for the sake of expediency.

As I began, I want to be clear. I support bankruptcy reform legislation, and I support many of the provisions in the underlying bill. However, throughout this process many important issues have been raised that identify serious problems that must be addressed. The Senate has been and should remain a deliberative body that seeks to draft the best legislation we can. Unfortunately, that is not what we are doing.

And unfortunately, based on these concerns, I regret that I am no longer able to support the bankruptcy legislation. I do not believe the bill before us is balanced. There remain many serious problems that must be addressed before I am ready to support the legislation. I have decided because of the summary disposition of amendments by the other side, this Democrat Member is going to vote "no" in the Senate.

Thank you, Mr. President, and I yield the floor.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I ask the time be charged equally on both sides during the quorum call.

The PRESIDING OFFICER. Without objection, the time during the quorum call will be charged evenly to both sides.

The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I yield myself as much time as I may consume from the Republican side of the agenda.

I thank my colleagues for this good debate on an important issue that does not belong on this bill. There are several key reasons, clear reasons why this amendment of the Senator from New York should be rejected. This is an important piece of legislation, the bankruptcy legislation. This amendment brings the most difficult social issue we have of our day into this debate. It does not belong here. It is not the right place to do this. We have plenty of pro-life issues to come before this Senate, and not to tie the bankruptcy bill up would be an important thing to do.

The membership opposes this amendment because, as we learned in previous Congresses, it is a poison pill.

The amendment is meant to kill the overall bankruptcy reform bill. I would hope that is not what the author's intent is. But that is the effect of this amendment. It kills the bill.

If the author of this amendment wants bankruptcy reform to move forward, it is something that needs to move forward. I have voted against bankruptcy reform in the past because I didn't think it was proper. I thought particularly we have problems on homestead provisions that we have been able to get worked out over the years we have been considering this legislation. Now we have that worked out as many other pieces have been refined over the 6 years this has been considered.

Now is not the time to add this most contentious issue into the debate. It is not the proper place, and it is time that we move the bill forward, move it to the House and to the President for signature.

Bankruptcy reform is an important matter. It would be my desire for my colleague not to offer the amendment so that we can focus on the particular critical issue facing our Nation in the form of the need for fundamental bankruptcy reform.

Aside from the abortion issue, I am deeply concerned about what I believe to be a lack of fairness and justice embodied in this amendment. There is a fundamental fairness issue involved with this amendment. No one in this Chamber condones violent crime. I am certain that everyone believes violent crime should be prosecuted to the fullest extent of the law. While the pending amendment is presented as a way to address violent crime, it would primarily and inappropriately intimidate and harm peaceful protesters. In fact, were the Schumer amendment to become law, no crime would even be necessary to trigger its sanctions. Merely violating a Federal or State civil statute, such as a minor trespass, would be enough to place a violator in financial jeopardy.

Historically this legislative body has fashioned criminal and bankruptcy penalties in a manner proportional to the gravity of the offense and the degree of injury and culpability. If enacted, this amendment would be a radical break with this tradition of prudence and fairness. For example, under current law, there are only a few extreme cases where a

debtor is prevented from seeking discharge of his or her debts through bankruptcy protection. For example, instances in which discharge of debt is prohibited include intentional financial wrongdoing, such as fraud and embezzlement, or cases where the debtor has created a grave unjustifiable risk to human life, such as injury caused by drunk driving. Those are appropriate.

The Schumer amendment would put a peaceful pro-life protester who, in the course of exercising his or her first amendment rights, simply steps in the wrong place--trespassing--on a par with embezzlers or drunk drivers. Should the price of constitutional freedom be the risk of financial ruin? Amazingly, this amendment says yes. The amendment says that people who protest and who do no physical harm, have no malicious intent should be singled out for harsh treatment.

While I make no excuse for violations of the law, I have to ask again: Should not the gravity of the punishment correspond with the offense? I don't think that is at all the case in this particular amendment.

A literal reading of the Schumer amendment would strip a peaceful protester of bankruptcy protection should he or she simply step in the wrong place while leafleting or even praying the rosary. Whether the fine involved is \$10 or \$1 million, we are talking about a peaceful individual and families with young children who should not be forced to risk paying this price simply for doing what the Constitution permits.

Fairness and the great tradition of our first amendment freedoms counsel against the adoption of this amendment.

I urge my colleagues to vote against it. It kills the bankruptcy bill. It is against fundamental fairness and freedom for people to exercise their right of free speech.

I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I rise to support the Schumer amendment to the bankruptcy legislation presently before the Senate.

The amendment provides that debts or judgments arising from acts of violence and threats of violence cannot be discharged in bankruptcy proceedings. While this provision was drafted in previous Congresses to specifically apply to reproductive health service providers and abortion clinics, it has been expanded this year with the help of some of our Republican colleagues.

The amendment now addresses violence and intimidation aimed at blocking access to any type of lawful good or service. The Schumer amendment now applies to anyone who threatens, intimidates, or harms another person in the course of a lawful practice in places like houses of worship, the workplace and restaurants.

Supporters of the bankruptcy bill argue that this amendment should be defeated because any amendment to so-called compromise bankruptcy legislation would upset the apple cart, causing the House of Representatives to reject it.

I cannot understand how this Senate could fail to pass an amendment that would simply prevent perpetrators of violence from hiding behind our bankruptcy laws. Where is the justice in permitting such a practice?

For the past week, supporters of the bankruptcy legislation have consistently talked about personal responsibility and the need to prevent people from abusing the bankruptcy process.

In fact, the centerpiece of this legislation is a means test that presumes chapter 7 filers are abusing the bankruptcy laws because their monthly income increases by as little as \$100.

The Schumer amendment is intended to prevent extremists and fanatics from abusing our bankruptcy laws to shield themselves from paying fines and fees imposed by a court of law after they have endangered someone's livelihood.

These attacks are more common than one might imagine. Since 1977, there have been 7 murders, 17 attempted murders, 41 bombings, 171 arsons, 100 butyric acid attacks, and 655 threats targeting abortion providers alone.

In total, there have been more than 4,000 cases of stalking, burglaries, kidnappings, assaults, anthrax threats, invasions, attempting bombing and acts of vandalism, perpetrated against people who were performing or offering a legal procedure. And in case after case, after the perpetrators of these acts of intimidation and violence are brought to justice, they hide behind the bankruptcy code to shield themselves from assuming responsibility for their actions.

As Senator *Schumer* has said, this issue is neither pro-choice nor pro-life; it is "pro-rule-of-law and anti-violence."

While we have a right to disagree with the law in this country, and a right to try to change the law, no person has the right to take the law into his own hands.

I have followed this issue for a long time. The first blockade of an abortion clinic occurred in Cherry Hill, NJ, in 1987.

The first murder of an abortion provider occurred 12 years ago, on March 10, 1993, when Dr. David Gunn was slain during an antiabortion protest at a Pensacola, FL clinic. Since then, there have been six more murders.

In 1994, responding to a rash of violence against abortion providers around the country, I asked the United States attorney to convene a task force to ensure that all appropriate measures were being taken to protect women and doctors and to prosecute those who threatened them with violence.

Later that year, Congress enacted the Freedom of Access to Clinic Entrances, FACE, Act, which established Federal criminal and financial penalties for those who employ violence and intimidation to prevent persons from obtaining or providing reproductive health services.

Unfortunately, the perpetrators of violence have used our bankruptcy laws to evade responsibility and escape the financial penalties that were part of the FACE Act. For example, former Operation Rescue president Randall Terry has filed for bankruptcy to avoid paying more than \$1.6 million in fines and fees that he owes as a result of his illegal actions.

We must not allow those who would take the law into their own hands and commit acts of violence against their fellow citizens to hide behind our laws when it suits their purposes. We must not allow our bankruptcy laws to be abused as a shield for violence.

I encourage my colleagues to support the Schumer amendment.

Mr. SCHUMER. Mr. President, we have 11 minutes on our side. How much time remains left on the other side?

The PRESIDING OFFICER (Mr. **BURR**). There is 10 minutes remaining on the minority side and 15 minutes on the majority side.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the last 5 minutes be reserved for me and the previous 5 minutes to whoever wants to speak for the other side.

The PRESIDING OFFICER. Without objection, 5 minutes will be reserved on each side to be allocated from that side's time remaining.

Mr. SCHUMER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, it is my understanding there is 6 1/2 minutes on the Democratic side.

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. I will use a minute and a half of that now.

Mr. President, I am happy today to rise as a cosponsor of the Schumer amendment. This amendment would ensure that debts arising from unlawful acts of violence cannot be discharged from bankruptcy.

America is a nation of laws. One might not always agree with the law or how it is interpreted, but that does not entitle you to willfully violate the law. The right to express disagreement is to seek change through peaceful means. It is never appropriate to resort to violence or intimidation in violation of the law. Here in the Senate we express policy differences through civil discourse and resolve them through the political process, not through violence.

We debate in this body passionately but in a manner of respect and civility in an attempt to persuade others of the merits of our position, and that is the purpose of the debate. Those who resort to violence are violating not only our laws but our American principles and values. They are violating what we call the rule of law on which this country was founded.

Unfortunately, some who break the law are using a loophole in the Bankruptcy Code to avoid paying the fines and penalties assessed against them as a result of their illegal activities. This amendment will ensure that individuals who engage in such acts of violence, intimidation, or threats, cannot hide in bankruptcy from the penalties imposed on them from violating the law.

I emphasize that this amendment is not about the right to abortion, nor does it single out anti-abortion protestors. This amendment applies to anyone who violates a law related to the provision of lawful goods and services. It applies to any extremist who will turn to violence to protest lawful activities.

For example, this amendment would apply to animal rights activists who engage in illegal tactics to shut down a lawful animal research center. There are many people who

think that using animals for medical research is immoral and wrong, but this does not entitle those people to come in and trash one of those facilities, as has been happening. It would apply to an ecoterrorist who engages in illegal tactics to intimidate car dealerships or timber companies from doing business with people they think they should not do business with. It would apply to an arsonist who starts a fire at a church to deprive worshippers of the right to practice their religion. All of these extremists must be held accountable for their actions, and none should be permitted to discharge their debts in bankruptcy.

It is true that some of the worst abuses of this kind have been anti-abortion extremists who have terrorized reproductive health care workers. They have directed thousands of acts of violence against abortion providers, including bombings, arson, death threats, kidnappings, assaults, and murders. When a man by the name of Barnett Slepian, who was a father of four, a husband, was a victim, I was the first person to come to the Senate floor and say that is wrong. When violence occurred at a Planned Parenthood clinic--I believe that is where it was--someplace in the South, I came to the floor immediately to say that one cannot violate the law because they disagree with what a lawful business is doing.

Dr. Slepian was an obstetrician/gynecologist. He provided health care to women and delivered babies and, on occasion, he performed abortions. He was at a downtown clinic, and he worked there specifically because he believed it was important he give his expert advice to people who were poor. Because of this, one night he was in his living room, and someone with a high-powered rifle shot and killed him while he was there with his family.

I did not know this doctor, but I learned after his death that he was an uncle of a woman who worked for me. The woman was from Reno. She was a good employee. Of course, she was heartbroken over the fact that her uncle had been murdered. The person who did this was not only a murderer but should be seen as a terrorist.

What is going on in Iraq today? We have these extremists, these terrorists, who do not like what is going on there, and so they are committing these criminal acts. They are taking the law into their own hands.

The man responsible for killing Dr. Slepian was extradited from France a few years ago where he had fled. His name was James Kopp. Kopp was part of an organized network of violent extremists, including a group that called itself the Army of God. The group and others similar to it have engaged in a long campaign of violence.

In 1994, we passed the Freedom of Access to Clinic Entrances, called FACE, which established Federal criminal and financial penalties for those who employed violence to prevent persons from obtaining or providing reproductive health services. The FACE Act is essential to protecting the lives of women and health care providers.

Unfortunately, some of the people charged under this act are filing for bankruptcy to avoid accountability for their illegal acts of terrorism. As an example, defendants in the so-called Nuremburg files case have tried to nullify years of court proceedings by filing a chapter 7 proceedings.

What are the Nuremburg files? Listen to this one: They posted on a Web site the names, addresses, and license plate numbers of people who worked in these health care facilities. They even posted pictures of their target's families, all members, and they would list them--father, son, mother, brother, whatever it might be--and places where their children waited for the school bus. Doctors who still worked appeared in plain text on the Web site, a person who had been wounded was grayed out; and those who had been murdered, including Dr. Slepian, had a line through their names.

It is intolerable that the groups which incite these heinous acts of violence can discharge their civil penalties in bankruptcy, but that is exactly what happened. If we want to prevent future acts of violence, including clinic violence, it seems to me that we need to have a specific provision in the bankruptcy law to prevent discharge of violence-related debts. That is what this amendment is all about.

I do not support abortion, but this amendment is not about abortion. It is about holding responsible those who commit illegal acts and believe that they are above the law. This amendment is about preserving the rule of law.

I cannot imagine how this amendment is causing a concern or a problem. Are we now to believe that there are people who are telling members of the majority, do not do this, we want to go and commit acts of violence, we want to commit crimes, and do not vote against us because you will prevent us from filing bankruptcy? That is what this is all about. Should not we as a body say that if one goes out and does these terrible acts, where they kill people, they maim people--one of their latest tricks is they figured out this acid which is some kind of a chemical compound, and they walk into these facilities and they throw it all over. It cannot be washed out. It cannot be steamed out. The only thing one can do is tear the facility down. Should they not be held responsible?

I cannot believe we are going to have a bill as important as this bankruptcy bill jeopardized because of the terrorists who are out there waiting to file bankruptcy. That is what this is all about. People are out there wanting to commit crimes, waiting to commit crimes, saying, do not pass this because if you pass it I will not be able to file bankruptcy. I just think it is beyond my ability to comprehend that people who know they are violating the law, they are killing people, they have this Web site that they are soliciting murder.

And we are going to condone this activity under the guise that this is a choice, this is a pro-life/pro-choice issue and we cannot get involved. This is not about abortion. It is about maintaining the law.

I am so disappointed that the majority is going to go along with the ability of people to commit crimes and terror and discharge them in bankruptcy.

The PRESIDING OFFICER. Who yields time? The Senator from New York.

Mr. SCHUMER. Mr. President, what is the status of the time on both sides?

The PRESIDING OFFICER. The majority has 11 minutes remaining. The Senator from New York has the last 5 minutes.

Mr. GRASSLEY. Mr. President, I rise in strong opposition to the Schumer amendment which would make debts incurred in connection with violations of the Freedom of Access to Clinic Entrances Act nondischargeable in bankruptcy. This amendment has been a poison pill to enactment of the bankruptcy bill and must be defeated.

On two previous occasions, CRS performed research for us and told us that FACE debts had never been discharged in bankruptcy. Just recently, I asked CRS to perform an updated search on reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters. CRS confirmed that this amendment is not necessary. The CRS memo identified only one reported case, which found the debt to be nondischargeable under the bankruptcy law's discharge exception for willful and malicious injury. So this amendment is not necessary. Even Senator **SCHUMER**'s own witness at the Senate Judiciary Committee hearing on the bankruptcy bill testified that in all the cases that she had litigated, the court had always found that the debts incurred under the FACE Act were nondischargeable in bankruptcy.

My colleagues make a big deal out of the fact that some of us on this side have supported amendments similar to this one before. The truth is, when the Schumer abortion amendment was offered in 1999 to the comprehensive bankruptcy bill, Vice President Gore was campaigning for the Democrat nomination. His opponent, Senator Bradley, was alleging that Vice President Gore was not sufficiently pro-choice. Vice President Gore's allies in the Senate were maneuvering to create a tie vote on the Schumer amendment so Gore could "break the tie" to improve his political standing.

To avoid this, most Republicans voted in favor for the Schumer amendment. Thus, that vote in the 106th Congress was not a vote on the merits of the Schumer amendment.

The Schumer amendment was included in the 107th Congress bankruptcy bill. But the fact is that in the 107th Congress, the Schumer amendment killed the bankruptcy conference report because the House would not take it. Thus, the Schumer amendment is a poison pill and must be defeated.

Let me reiterate that in two previous memos, CRS concluded that the Schumer amendment is unnecessary because abortion protester debts are already not dischargeable in bankruptcy. We have just updated this research and CRS has confirmed that FACE Act

violations are not dischargeable in bankruptcy. The proponent's own witness testified before the Judiciary Committee that none of these debts have ever been discharged in bankruptcy. The reality is that the Schumer amendment is just a political ploy designed to generate opposition to the bankruptcy bill. The Schumer amendment is a poison pill which will kill the bankruptcy bill. This amendment must be defeated, and I urge my colleagues to oppose it.

The PRESIDING OFFICER. Does the Senator from Iowa ask unanimous consent to yield back the remaining time?

Mr. GRASSLEY. Yes.

The PRESIDING OFFICER. The Senator from New York is recognized for his final 5 minutes.

Mr. SCHUMER. Mr. President, in conclusion, I would like to rebut some of the comments of my colleague from Utah who said this amendment was not necessary, and he talked about Maria Vullo, the lawyer who represented the clinic in the Nuremberg files case.

Here is the major point. She did not collect any money in that case. Despite spending \$1 million of her own money, pro bono, despite relitigating in six bankruptcy courts, she was unable to collect any dollars. This is the point we are making. Perhaps at the end of the day you will get a nominal victory if you go all around the country chasing these fanatics in bankruptcy court, but you cannot collect. That is why the American Coalition of Life Activists, a violent fringe anti-choice group, actually requires its leaders to be judgment proof.

Here is the bottom line: This amendment, which was supported by so many on the other side, is being dropped, not because it is wrong but for expediency, so there will not have to be a bloody battle in the House between those who are on the Republican side, between those who are more probusiness and those who are vehemently opposed to this amendment. I will not denigrate the pro-life movement by labeling them that way because the pro-life movement cannot be for these violent groups.

This amendment is for the rule of law. This amendment says you cannot use violence against any group to achieve a political end and then, when you are sued civilly, use the bankruptcy courts for protection. That has never been what the bankruptcy courts were intended to be. It is neutral on terms of what issue. Yes, it might be extremists who are against abortion. It also might be extremists on the left side, on the environmental side who burn buildings or houses or cars. Are we going to, as a society, condone that type of activity?

I will tell you, if we defeat this amendment, that is what we are doing. Make no mistake about it, make no mistake about any of the subterfuges. To me, this amendment and the

rule of law and the American way of life that this amendment stands for are more important than the rest of the bankruptcy bill.

The bankruptcy bill, whether you are for it or not, twists the dials a little bit with regard to the balance between creditors and debtors. I assure you that was not on the Founding Fathers' minds when they wrote the Constitution and created the Republic.

What this amendment does goes right to the heart of what America is all about. It says those who use violence to achieve their political goals cannot get a benefit, in this case bankruptcy. It, in my judgment, as I said, is more important than the rest of the bill.

So I ask my colleagues on the other side to rise to the occasion. Do not let arguments of expediency persuade you. That is the slow road to oblivion. That is the tortured path to undoing step by step, bit by bit, as the river creates a canyon, the way of life that we love. No matter how strongly one feels about something, their job is to persuade others to their viewpoint, not to take the law into their own hands and use violence. And if they do, they should not be allowed to use the Bankruptcy Code or anything else to prevent just civil or criminal action against them.

I ask my colleagues to look into their hearts, to examine what this amendment does, and to have the same courage--courage of conviction and courage of a fair compromise--that we showed a few years ago. I urge support of this amendment.

I yield the floor.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 47 offered by the Senator from New York. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. **CORZINE**) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced--yeas 46, nays 53, as follows:

[Rollcall Vote No. 28 Leg.]
YEAS--46

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Cantwell
Carper
Chafee
Clinton
Collins
Conrad
Dayton
Dodd
Dorgan
Durbin
Feingold
Feinstein
Harkin
Inouye
Jeffords
Johnson
Kennedy

Kerry

Kohl

Landrieu

Lautenberg

Leahy

Levin

Lieberman

Lincoln

Mikulski

Murray

Nelson (FL)

Obama

Pryor

Reed

Reid

Rockefeller

Salazar

Sarbanes

Schumer

Snowe

Specter

Stabenow

Wyden

Alexander

Allard

Allen

Bennett

Bond

Brownback

Bunning

Burns

Burr

Byrd

Chambliss

Coburn

Cochran

Coleman

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Inhofe

Isakson

Kyl

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (NE)

Roberts

Santorum

Sessions

Shelby

Smith

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

NOT VOTING--1

Corzine

The amendment (No. 47) was rejected.

Mr. McCONNELL. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, in a few hours we will be voting on cloture for this bill. I would just like to take a minute or two and remind everyone why it is time to end the debate on this bill.

It has been 8 long years of consideration on this legislation. We have all compromised a great deal. Not everyone got their preferred language or amendments. Not everyone is happy with the current legislation.

But I think everyone would have to agree that we have given thoughtful consideration and fair opportunity to all suggestions on the bill throughout the years of debate.

Over the years, we modified the homestead exemption.

We modified the means test.

We provided for sanctioning attorneys who file abusive claims.

And we hindered creditors who would try to collect through predatory lending practices.

All of these changes, among scores of others, came from my Democratic colleagues.

After all this, just 2 weeks ago, we took 5 more Democratic amendments in the Judiciary Committee markup.

And yet almost everyone of the pending amendments today touches upon the areas where we have previously compromised.

At a certain point, the time comes to move forward with what we have. Given how far we have come on this bill already over the last 8 years, and considering all the compromises that have been made, we may get no bankruptcy bill at all if we try to take more amendments.

The lopsided votes in favor of this bill in the past--with 70, 83, and even 97 votes in this Chamber--reveal that we are left with only a small minority of opposition. The fact is that a large majority of this body recognizes that we are not doing anything radical in this bill.

We simply ask that higher-income filers who can pay their bills, should pay their bills. It is as simple as that. There is no reason to ask the vast majority of bill-paying consumers to pickup the tab when those with means do not repay their obligations.

After 8 long years, we have compromised every which way we can. The remaining amendments being proposed are just further adjustments of adjustments to adjustments that were already made during this process.

There is simply no reason to continue to holdup this bill through the amendment process. The longer we delay, the greater the chances for mischief. The more we stall this measure, the more likely we open it to political, message amendments that can only act to stall work on this bill.

A time comes when you just have to say enough is enough. Eight years should be long enough to pass one bill.

I urge my colleagues to join me in voting for cloture.

Mr. BAUCUS. Mr. President, I want to explain my decision to oppose closure on the Bankruptcy bill. I have offered an amendment to this bill modeled on legislation I have introduced to set up a permanent health care trust fund for current and former Libby residents, and former workers at the W.R. Grace vermiculite mine in Libby, MT. The trust fund will help pay for medical costs associated with treating asbestos-related disease

or illness caused by exposure to deadly tremolite asbestos and other fibers released by Grace's mining operations.

I offered this amendment to this bill because it presented an opportunity to make whole the people of Libby, who have suffered, while preventing a company like W.R. Grace, which has filed for bankruptcy, from emerging from that bankruptcy without setting up a health-care trust fund for its victims.

I have worked very hard to make sure the people of Libby, MT, are protected in any asbestos legislation to come before Congress; to include special provisions in an asbestos bill for Libby residents that take into account the unique kind of health impacts associated with exposure to the deadly asbestos fibers from the W.R. Grace vermiculite mine.

For years, I have been committed to securing a common sense solution for the residents of Libby. I strongly believe that too many people have suffered, and they deserve fair compensation. I will do everything in my power to help Libby make their community whole again and to make sure their long-term health care needs are met. Passing bankruptcy legislation, with consideration of my asbestos amendment is essential. I will fight to get additional protections for Libby residents and then work to pass the bill.

Unfortunately, we have not had an opportunity to vote on this amendment, and it has been judged to be non-germane. The bankruptcy bill is all about responsibility and accountability. This amendment tries to hold W.R. Grace accountable for its actions. Because we were not able to vote on this amendment, I can not support limiting debate on this bill.

**BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT
OF 2005--Continued -- (Senate - March 08, 2005)**

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 p.m. having arrived, the Senate will proceed to a vote on a motion to invoke cloture on S. 256. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

Cloture Motion

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 14, S. 256, a bill to amend title 11 of the United States Code, and for other purposes. Bill Frist, Arlen Specter, Chuck Grassley, Judd Gregg, Thad Cochran, R.F. Bennett, Wayne Allard, Lindsey Graham, Jeff Sessions, Trent Lott, Rick Santorum, John Warner, John Thune, Orrin Hatch, Lisa Murkowski, Mel Martinez, Sam Brownback.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant journal clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted--yeas 69, nays 31, as follows:

[Rollcall Vote No. 29 Leg.]
YEAS--69

Alexander

Allard

Allen

Bennett

Biden

Bond

Brownback

Bunning

Burns

Burr

Byrd

Carper

Chafee

Chambliss

Coburn

Cochran

Coleman

Collins

Conrad

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Inhofe

Isakson

Johnson

Kohl

Kyl

Landrieu

Lieberman

Lincoln

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (FL)

Nelson (NE)

Pryor

Roberts

Salazar

Santorum

Sessions

Shelby

Smith

Snowe

Specter

Stabenow

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

NAYS--31

Akaka

Baucus

Bayh

Bingaman

Boxer

Cantwell

Clinton

Corzine

Dayton

Dodd

Dorgan

Durbin

Feingold

Feinstein

Harkin

Inouye

Jeffords

Kennedy

Kerry

Lautenberg

Leahy

Levin

Mikulski

Murray

Obama

Reed

Reid

Rockefeller

Sarbanes

Schumer

Wyden

The PRESIDING OFFICER. On this vote, the yeas are 69, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. McCONNELL. I ask unanimous consent that Senator **DOLE** be recognized for up to 15 minutes as in morning business, after which Senator **JACK REED** of Rhode Island be recognized for up to 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mrs. **DOLE** and Mr. **REED** are printed in today's **RECORD** under ``Morning Business.")

The PRESIDING OFFICER (Mr. **COLEMAN**). The Senator from Illinois.

AMENDMENT NO. 40 WITHDRAWN

Mr. DURBIN. Mr. President, on behalf of Senator *Pryor*, I ask unanimous consent amendment No. 40 be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, now that we are postcloture, the number of amendments is limited, and the type of amendments will be limited. I have three pending amendments before the Senate relative to the bankruptcy bill.

For those of you who have not followed the debate on this bill, this bill will change the bankruptcy law in America. Today, many people go into bankruptcy court because they have no place to turn. They have more debt than they can possibly pay.

One of the major reasons people reach this point in life, the No. 1 reason people go to bankruptcy court is medical bills. Three-fourths of the people in bankruptcy court with medical bill problems had health insurance when they were diagnosed with their illness. If you think, I don't have to worry about bankruptcy court because I have health insurance, so do these people. What happened? They got sick. The bills started piling up. Maybe they lost their job and their health insurance and couldn't afford to pay the COBRA premium, which people have to pay once they have lost a job and health insurance. They gave up on their health insurance, and the bills started stacking up. It reached the point for these folks where they had nowhere to turn. They faced \$50,000, \$100,000, or \$200,000 in medical bills they could never pay off for the rest of their lives. In desperation, and with some embarrassment, people then went to bankruptcy court and said: I have no place to turn. I just can't do it.

A court says: What do you owe? Give us all our assets. What do you have in checking and savings? How much is your home and your car worth? Furniture, everything--what is it all worth? Where are your debts? We will let you walk out of bankruptcy court with very little left, but your debts will be gone.

That happens to people. More often than not, medical bills drive them there.

There are other reasons. You lose your job. How many people have you met in their fifties in America--I have met many in Illinois--who had a great career and a great job and lost it, then went out looking for a comparable job only to learn they were ``too old for the market"? There they sat, taking a job that paid less, trying to maintain a family and

household that was basically financed with a higher salary not that long ago. In desperation, they try to keep things together, and it starts to fall apart. The debts they incurred when they had a good job they cannot handle anymore.

What else happens to people? Some people live on the margins already. Some single mothers trying to raise kids are in a situation where finally something happens to them--a medical bill, an unforeseen circumstance--and they are stuck in bankruptcy court.

The credit industry comes in and says: We have to do something about these payments. We have to make it more difficult for them to walk out of that bankruptcy court having given up their assets with their debts basically behind them. So the law is changed here in this 500-page bill written by the credit card industry, written by the financial industry, to make it more difficult for a person to walk out of court with their debts behind them. They make sure in this bill that it is more likely for many that they will walk out of court still paying, on and on. As little as \$165 a month is enough to say that you will never be forgiven in bankruptcy. You will just keep paying and paying. The creditors will keep calling and calling. That is what the credit industry wanted. They worked hard for 9 years. They are going to win this battle.

We came to the Senate floor and said, at least let us carve out some people who really should be treated differently. I am sorry that the marines who were here earlier didn't stick around. I wish they could have, I wish they could have heard the debate on the floor of the Senate when I offered an amendment and said: If you activate a guardsman or a reservist for a year or a year and a half and they go over to serve their country as they promised, leaving behind a restaurant or a small business which falls into bankruptcy while they are gone--and it has happened--shouldn't we give them a break in bankruptcy court? For goodness' sakes, these people aren't morally deficient; they are our best, and they are serving our country. They are protecting you, me, and everyone else.

I put in an amendment that said, at least for the men and women in the military who face this kind of bankruptcy--and it happens--let us give them a break in this bill. Let us not put them through the harshest parts of this bill. I lost the amendment 58 to 38. Many of the Senators who go back home and cheer the troops and how much we love them and how much we want to stand behind them couldn't wait to vote with Visa and MasterCard and against the Army, Navy, Marine Corps, Air Force, and Coast Guard. That is what it came to. We lost that amendment.

Senator *Kennedy* came to the Senate floor and said: If you get swamped with a medical crisis in your family and go into bankruptcy court trying to get out from under something you will never pay off, shouldn't you, when it is all over, at least be able to go home? Shouldn't you have a roof over your head when it is all over if it is medical bills that put you in bankruptcy court? He offered an amendment and said: Let us at least protect \$150,000 in equity in your home that you can go back to after bankruptcy.

Think about that. What will \$150,000 buy you? In Springfield, IL, it buys you a nice little house. What does it buy you in Washington, Boston, New York, and California?

Not much. But when we offered that amendment, only 40 Senators voted for it and 58 or 59 voted against it.

The argument behind this bill originally was that too many people went to bankruptcy court because of their moral failure. They didn't understand that they can't game the system, they can't use it in a way that is fundamentally unjust and immoral by going to bankruptcy court when you shouldn't go. But in the two examples I have given you, does that argument apply? Is there something fundamentally wrong with the values of men and women in uniform serving our country who can't keep that business afloat back home? Of course not. Is there something fundamentally wrong with a person who feels as if he is on top of the world, goes in for a diagnosis at the doctor, and ends up with a life-threatening disease which costs hundreds of thousands of dollars where his health insurance fails him? Is that a moral failure?

It is a failing of Congress. It is a failing of your Government to deal with the realities of the challenges of life, whether it is health care or service in the military.

We went in and argued: What if you were the victim of an identity theft? And it happens; it happened to me. What if someone steals your identity and runs up bills in your name? It can happen to anyone listening to this debate. Senator *Bill Nelson* of Florida said, in that situation; if all the bills that have swamped you are not even bills of your creation, shouldn't we give you a break under this tough new bankruptcy bill? Overwhelmingly, on a partisan rollcall, the answer was, no. No. Ultimately you shouldn't be discharged from bankruptcy even if those weren't your debts.

We said: What if the people lending the money to you break the law while they are lending it to you? What if they take--and you know this story; it happens in every community. What if they take advantage of an elderly widow or widower living in that little home they have always had? They knock on the door: Boy, you sure could use a new roof, Ma'am. Luckily, I have a company out here that will do it if you just sign a few papers.

The next thing you know, you have one of these phony, predatory lenders coming in with a subprime mortgage with a balloon clause, and grandma's little house disappears. He looked so trustworthy. He seemed like such a nice man. He told me this was a standard contract. Yes, I signed it. I should have called you, but I just signed it.

What about those people? Should they be able to take away her home; go to bankruptcy court and stand in line with all the other creditors and say, Treat me like another legal creditor? I didn't think so.

So I offered an amendment saying those people should not have the advantage of going to court if they have broken the law in the way they make the loan. I didn't have a chance on that amendment. Those who are supporting this bill did not want to talk about that. One Republican Senator supported me. Just one.

Time and again, whether we are talking about victims of bankruptcy who deserve a little help, or whether we are talking about those gaming the system from the creditor's side, we found this stone wall that separates this Chamber. The Republican side does not want to consider any changes to this bill. The credit card industry has written it, and they are sticking with it.

The only perfect laws ever written were written by God and Moses, as far as I am concerned. All of the rest are amendable. All the rest can be improved. Here we assume that if it was generated by the largest credit card companies in America, we cannot argue with them.

One of the best arguments that has been made is, this bill does not apply to people who make less than the median income. That has been a point made over and over and over again during the course of this debate. Why is it important? Because this new law imposes a brandnew set of requirements in bankruptcy court for those who are above the median income. At least that is the argument.

Let me show this listing of all the documents that now have to be filed in bankruptcy court. It is pretty long. I used to practice law. I know it takes time to fill these out. You sit down with your client. You say: Get your income tax returns. Get all the checks you can find. Let's sit down. This will take some time. This is the current requirement under the law. So it is not as if you walk into bankruptcy court, sign your name, and wave and leave out the other door. It is a long process.

During the course of the process, your creditors and the trustee in bankruptcy decide whether you are telling the truth. If you aren't, they will throw you out of court on your ear. That is the way it ought to be.

Now comes this bill which says these papers are not enough. Here we have the new means test. This is an example of what you have to do in addition to all the current requirements to file bankruptcy. This is the means test in this bill. It not only adds to the complexity of this process, it adds to the cost. So here you are without enough money to pay your bills, trying to figure out how to come up with a filing fee of \$200, how to pay that lawyer who is going to represent you in bankruptcy, and along comes this bill which says let me give you some more paperwork to fill out before you can qualify for bankruptcy.

The argument has been made over and over again in the Senate that people below the median income do not have to go through this. My amendment will clarify that, amendment No. 110. We want to make it clear that if you have below the median income, you do not have to go through the means test. In other words, on the first line up here, "current monthly income," if you have proof your current monthly income is in the lower income categories, supposedly protected from this bill, that ought to be the end of the story.

It is not now. I want to clarify that. I want to make sure that Members of the Senate who have come to the Senate and said people below a median income could not have to worry about this bill, really mean what they say. I emphasize and underscore my amendment does not in any way relieve those filing for bankruptcy from meeting all the other requisite steps. They still need to complete a lot of forms and schedules outlining assets and liability. We add language that makes it abundantly clear that a court may not dismiss a case based on any formal means testing if the current monthly income of the debtor falls at or below the median family income of the applicable State. The language I offered merely reinforces what Members of the Senate on both sides of the aisle, particularly on the Republican side of the aisle, have said over and over and over again from the beginning of the debate.

Let's look at the statement of my friend and colleague, Senator **ORRIN HATCH**. Here is what Senator *Hatch* said in the Senate:

It is possible that during this debate some may falsely suggest that this bill unfairly treats low-income persons. Let me tell you at the outset that the poor are not affected by the means test. The legislation provides a safe harbor for those who fall below the median income, so they are not subjected to the means test at all.

But they are. Under the current language of this bill, it is not clear that they are exempt from the means test, as Senator *Hatch* has argued.

Now, let's take a statement from Senator *Frist*, the Republican leader of the Senate. Senator *Frist*, on March 1, last week, said:

It [the Bankruptcy Reform Act] establishes a means test that is based on fair principle, a simple principle, and that is this, that those who have a means should repay their debts. A simple principle: Those who have the means should repay their debts. It specifically exempts anyone who earns less than the median income in their State.

That is what my amendment says. If you earn less than the median income, finish the forms that are already provided in bankruptcy court, the new law does not affect you. But if you earn over the median income, you have to fill out more forms. So it means the lower income people, just as Senator *Hatch* and Senator *Frist* have said, will not have to go through the extra expense and the extra time of going through mountains of paperwork.

Let me also take a quote from Senator *Sessions* from Alabama who has been on the Senate floor in support of this bill. Here is what he said:

Chairman Sensenbrenner pointed out that the means-based test only applies to people with incomes above the median state average. Anyone below the state median income does not qualify on the means-based test and their bankruptcy petition cannot be tossed out of chapter 7 and put into chapter 13 where some debts are paid back.

That is as clear as can be. Senator *Sessions* told us that. Now we have another statement from Senator *Sessions*:

I remind all of my colleagues that people who are economically distressed and if the income is below the median income already will be exempt from the means test.

So my challenge to all those who made those statements is, prove it. Prove it by voting for this amendment. Prove it that if you establish that you have an income below the median income in your area, that you do not have to go through this means test. They have all said it. Now they will have a chance to vote on it.

Let me speak to one of my other amendments. I tried earlier in my first amendment to protect the soldiers activated and fighting overseas who lost their businesses. I failed, 58 to 38. I was surprised by that rollcall, but I watched what happens. Virtually every amendment has failed. As I said, some view this as holy writ. I just view it as a product of the credit industry, their best hope of something they want to pass in the Senate.

So I will offer amendment No. 111 to exempt certain veterans and current members of the Armed Forces from the onerous administrative burdens resulting from the means test. We say in this amendment it applies to members and spouses of members of the Armed Forces on active duty performing a homeland defense activity under title 32, veterans or their spouses whose indebtedness occurred primarily during a 6-month or longer period of active duty or performance of a homeland defense, reservists of the Armed Forces or their spouses, same situation, surviving spouses of those who died while serving as a member of the Armed Forces.

We take a category of Americans to whom we all owe such a great debt of gratitude and say if their debts overwhelm them because they are serving our country, we are going to give them a break, a chance to avoid this lengthy, expensive means test in this bill. I hope my colleagues will reconsider their earlier vote against this amendment. This is a much more compact, succinct, and limited break for those who are serving.

The last amendment I will offer, amendment No. 112, is if I fail on the previous amendment. Let me tell you what it says. It provides an exemption from the means test only for disabled veterans who incurred their indebtedness primarily during a period of service. It covers service on active duty or during a National Guard homeland security operation. Certainly we can give something of a break to these Americans who have given so much to us.

I go out to Walter Reed Hospital. Many of the men and women who have been injured are amputees. I remember one in particular. I said: How are you?

He said: My rehab is coming along just fine. I think I will be great. I have my new leg. I am learning how to walk on it. I would like to go back to my unit, but I am going to go back home. I am a little bit concerned. I had a job back home. I was an automobile mechanic. I don't know if I will be able to return to that job.

That situation for that man and for so many others reflects this change in their life. Yes, they will receive disability payments, but some of them, because of the serious injuries they have faced--head injuries, the loss of both hands, the loss of both legs--will not be able to return to the life they had before. Some of them may find they can't keep up with the debts that have been incurred while they have served our country. Is it possible the Members of the Senate, for disabled veterans, would give them a break if they are forced into bankruptcy because of debts incurred while they served our country? That is my last amendment.

I hope it doesn't reach that point. I hope all of us who come to the floor to give important speeches in tribute to the men and women in uniform will cast important votes on behalf of those men and women.

The credit card industry is important to America. I think they can do a better job in the business in which they are involved. They ought to take care, with the flood of credit cards that they send to everybody under the sun--the 3-and-a-half-year-old little boy of an attorney on my staff, a 9-month-old daughter of a friend of mine, all receiving credit card applications. They are throwing them at America. Many Americans, without thinking twice, are signing up, going more deeply in debt than they should.

The monthly statement from the credit card company--I am telling you this as a lawyer--flip that over and try to read the fine print. Senator *Akaka* of Hawaii said: Shouldn't they tell you at least if you make a minimum monthly payment how much it is going to cost you over the period of time it will take to pay it off? Simple enough.

The credit card industry opposed it. It was defeated on the floor. The idea of giving Americans more information so they can make the right credit decisions was defeated on the floor.

You have to believe the industry that opposed providing that information is an industry that doesn't care if you go head over heels in debt. They think they are going to win. They are certainly going to win if this bill passes because that credit card debt is going to hang on for a lifetime. You won't be able to shake it. When we hear the stories of people who are going to be victimized, I hope we will think twice about the wisdom of this legislation.

The trustees in bankruptcy were asked to take a look at what percentage of people filing for bankruptcy were fraudulent, had no business in court. They came up with the number 3 percent, 3 out of 100 are fraudulent and should not be in court. Most of them are discovered. The credit card industry said, no, it is much larger. It is 10 percent, 1 out of 10. This bill doesn't apply to the 10 percent of fraudulent filers. This bill applies to every filer in bankruptcy. That is why many of us think it is fundamentally unfair.

I can read the votes. I have been around Congress to know this is going to pass. I certainly hope with these three amendments that my colleagues will take some time and consider whether they want to live up to what they have said. If they want to exempt

lower income families from the means test, my amendment lets them do it. If they do believe we owe something to the men and women in uniform, my amendment gives them a chance to vote that way. And if for no other reason they want to show some sympathy and concern for disabled veterans who have given so much to our country, they will have a chance with amendment No. 112.

I hope the solid wall of opposition to every single amendment will break down. I hope my colleagues will take the time to read and consider these amendments. It will be a lot easier to face the people back home if we at least give some flexibility to this bill when it comes to these important exceptions.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I am proud of the bipartisan bankruptcy bill moving forward. We were excited over the strong vote for cloture to bring this debate to an end, 66 or more votes for cloture. That was a tremendous bipartisan show of support. I know my friend, the Senator from Illinois, opposes the bill. He has offered a lot of amendments. Fundamentally he doesn't like the bankruptcy bill. At one point he did. At one point he was a sponsor of it. For whatever reason he is now not supporting the bill. That is all right.

Our goal with regard to the bankruptcy bill was to continue the historic privilege that Americans can wipe out debts and have a fresh start. However, since the new bankruptcy bill was passed in 1978--that is the new one we are now under, a big bankruptcy reform--then we had about 200,000 filers in bankruptcy. Now there are 1.6 million filers in bankruptcy. A lot of people are using bankruptcy as a way to avoid paying their just debts. We wrestled with that. There was a lot of concern that something is out of sync, that the classic American moral value that you ought to pay your debts if you can ought to be honored.

At the same time we ought to create a circumstance in which people can start over. As many Americans have learned, if they fall behind in payment of debts, creditors call. You can have lawsuits filed against you. Families get embarrassed. Court orders get issued. Those kinds of things can be upsetting to a family. Sometimes you get so far behind there is no way you can get out of it. That is what bankruptcy is for. So we looked at it and tried to figure how we could reach the right balance.

How do we crack down on those who want to get off scot-free, not pay their debts, when they have the money to pay them, and do we protect those who need a fresh start? First, let me tell you the power of bankruptcy. A person making \$200,000 a year, who owes maybe \$150,000 in various debts, can go into bankruptcy court and file bankruptcy today and get all those debts discharged, when he or she could easily have paid back most of them. That is the way the system works. You read one of those ads and call one of those guys or ladies who advertises in the free newspaper at the checkout counter, and they tell you to call your bankruptcy lawyer and wipe out your debts. People do it--sometimes only after talking to that lawyer who only gets paid, frankly, if the client retains him to file a bankruptcy. They may have other alternatives to get out of that financial difficulty and they may not understand that.

What I want to emphasize is that we decided to create a bright line, a rule that would apply easily across the country in bankruptcy court, and that is what we are doing--amending the law of bankruptcy court, which is a Federal court, under Federal law. All bankruptcies are done in Federal bankruptcy court, so it is our responsibility to deal with the problems in that court. So we created a bright line rule.

If you make below median income and you owe debts, you can wipe them out, as you always have. You don't have to pay your doctor, your hospital, the automobile mechanic down the street who fixed your car, your brother-in-law back for his loan, the credit card company, or anybody else you owe--the bank, the credit union, wipe them out. So if you make below median income, the law is basically still the same for the debtor; he wipes it out. We had expert testimony in the Judiciary Committee, of which I am a member, that said 80 percent of the people who file bankruptcy make below median income, only 20 percent above. We said what about people who make above median income, but they might have special circumstances? Maybe they have a child who has a high monthly expense. Maybe the debtor himself is disabled, with extraordinary medical expenses, or things of that nature. We said we would make an exception for those people who have extraordinary expenses, and the estimates show that would add another 7 to 10 percent who would be able to automatically file under the median income and, therefore, would not have to pay any of their debts back under this other provision of bankruptcy law, chapter 13. So we agreed on that.

That is the bill that passed. That means test philosophy passed this Senate, one time, 97 to 1. It passed three times in this body. The last time we voted on it, it was 83 to 15 to pass the bankruptcy bill. We had the Schumer amendment on it--which we voted down recently--at that time, and the House of Representatives refused to take the bill and pass it. It died because of the Schumer amendment, which was a maddening thing for those of us who had been working on it for 4 years. I thought it was unbelievable that such a small but poison pill could kill the legislation. I have heard a lot of times about how a poison pill can kill a piece of legislation. Since I have been in the Senate, I have never seen a more perfect example of a poison pill. It came back up. Senator *Schumer* offered it and we voted it down earlier today.

This bill will not have the poison pill in it. We sent it over there with bipartisan support every time and, for one reason or another, it didn't become law. The House supports it. I am confident if we pass this legislation, without the Schumer amendment, it will pass the House of Representatives and go to the President for signature. I emphasize all this to say there is nothing wrong with the means test. People who make high incomes--lawyers, doctors and accountants are examples--and file bankruptcy, wiping out all their debts, who don't care who got hurt by their failure to pay and they care only about themselves, this will crack down on those people who are abusing this system. I don't think there is anything wrong with it. I believe it is the right thing to do.

As a matter of fact, I hear even those who oppose the bill say they don't oppose the bill, but they have spent all the time trying to confuse this, suggesting that poor people are going to have to pay something back. The chances are, if they are poor and are making below median income in America, they won't have to pay back anything. What if they make above median income? Perhaps they will have to pay back a portion of their debts. The bankruptcy judge, under certain circumstances, may order that they pay back a certain percentage. They can be made to pay a certain percentage of those debts back through the court, and it is distributed on a fair basis to the creditors who have claims against the debtor for a period not to exceed 5 years. That is what is commonly and legally known as chapter 13.

A lot of people all over America choose chapter 13 and agree to pay back their debts because they think it is the right thing to do, and it has some personal advantages. A lot of people find it hard to believe, but in my home State of Alabama, about one-half of the filers in bankruptcy court choose to file under chapter 13. What happens when you go into chapter 13? All the phone calls have to stop. You cannot be sued. If a lawyer tries to execute a judgment against your property after you filed in bankruptcy under either chapter 7 or 13, they are in contempt of court immediately. The family gets to calm down. The court helps set up a repayment schedule for a part of the debts the debtor owes, and their paycheck may go to the bankruptcy court and they parcel it out to the various creditors, and the debtor gets to keep a certain amount to live on, whatever he or she needs. That is the way chapter 13 works. It is not oppression to go into chapter 13. Almost half of the people in my State who file bankruptcy choose to file under chapter 13.

Well, Senator *Durbin* quoted me. I was impressed that out of all those out here, he quoted me. I suppose he quoted me correctly, but maybe he was a little bit incorrect in interpreting what I had to say, or perhaps I spoke in a way he did not understand. I thought I was clear. I said in my remarks that if you make below median income, you are not subject to the means test. I guess that technically may be a misspeaking. What I meant was you are not required to pay anything back under chapter 13. He said, well, why fill out the forms? Well, you fill out the forms to see whether your income falls below the median income in America; that is why you fill out the forms. Surely, people would expect you, if you want to ask a U.S. bankruptcy court in whatever State in America you are in and you want to ask them to discharge your debts, and you want them to order that you do not owe anybody you have been owing for the last 10 years, and your

debts are built up and you don't want to pay any of them a dime, surely it is not too much to ask somebody to show what their income is, to bring in a payroll stub to see what your paycheck is, and bring in an income tax return to see what you have been showing on your income tax. What is wrong with that? They say, oh, we have all these documents. I am telling you, I don't think we ought to be shocked that before a court wipes out maybe hundreds of thousands or tens of thousands of dollars in debt, they at least find out how much income the guy has and how much property. What if they own 500 acres of land out in the country? Should they not have to declare their assets?

Why should they keep property, stocks, bonds, or anything else of value and not pay the people they solemnly committed to pay? If they have assets, let's find out what they are. That is all we are talking about.

How are you going to tell whether a person qualifies for a means test if you do not have them produce some information about their income? I do not think that is oppression, and I do not think people are being oppressed if a credit card company lets them have \$5,000 and they do not pay a dime of it back. I do not think a person is being oppressed. This is not some sort of anti-capitalist body. People get money all the time. They borrow money. They promise to pay it back. If nobody pays back their debts, everybody who uses a credit card will find their costs going up. Every bank loan will go up; every housing loan will go up. We have to have integrity, but we are going to give people--1.6 million of them a year last I heard--the ability to wipe out their debts. For probably 90 percent of them, they can wipe out all of them if they choose, and for the remaining 10 percent, they may have to pay some back. Some of those people absolutely ought to be paying back some of their debts.

We are all just victims here. It is so discouraging to me to hear skilled Members of this body talk about the American people as if they are just victims and pawns. I have seen the polls. Overwhelmingly, the American people believe you ought to pay your credit card debt back rather than pay other things because they know their interest rates are higher there. Frankly, I think everybody ought to reduce their credit card debt. They ought to chop them up and throw them away.

I was glad that my children--my two daughters and son--when they were off at college had a credit card. I told them not to use it unless they had to, but if they were out on the road and the car broke down, or something happened, I trusted them to use that credit card. What a wonderful thing. Anywhere in America--actually anywhere in the world--you can stick that card in a machine and out pops money. And if you pay it on time, you hardly pay any interest.

I am not here to condemn the credit card companies, and I reject and am offended by the repeated suggestion that this bill is supposed to do nothing but protect credit card companies. That is false. It demeans the integrity of the Members of this Senate, in my view, who have worked hard on a bipartisan basis, 85 to 15, the last time we passed this legislation. I guess that is all they have to say when they complain about the bill.

We talked about the military, and I am concerned about our military. I offered--and I was pleased that the President made part of his supplemental appropriations bill--an amendment to increase the death benefits of our soldiers, raising the basic death benefit from \$12,000 to \$100,000 and increasing the SGLI, Servicemen's Group Life Insurance, to \$400,000 from \$250,000, retroactive to the beginning of the war on terrorism. It will help all those families.

I, like other Senators, visited soldiers in the hospital at Walter Reed. I visited them in Germany. I have been in Iraq three times. I have talked with all the families from Alabama who have lost soldiers in the war. I served in the Army Reserve for 10 years, missing by several years being activated in the first Gulf War. Some of my best friends are still in the Army Reserve. I understand what they are going through. I talked with them in Iraq in January of this year. Some have suffered financial difficulties as a result. We know that.

I offered the amendment that would make clear and explicit that a service man or service woman who has been activated and is not able to pay their debts would, in fact, be a special circumstance that could keep them from having to pay back their debts under chapter 13, and they would be able to wipe out all their debts. No matter what their debts are, if their income is below median income, they get to wipe them out anyway. It is just in that top 20 percent, they may need special circumstances.

I defined it, and we passed--at the same time, Senator *Durbin's* amendment was voted down--to give them that special protection. I think that was the right way to do it. Senator *Durbin* had an automatic guaranteed set-aside for them in a way that I think was not as appropriate as the route the Senate chose to take. But he got a vote on his amendment and I got a vote on my amendment.

I also recall, for those who are listening, that we do have a powerful Soldiers and Sailors Relief Act that has been updated. That is the new title. The old, classical Soldiers and Sailors Relief Act says if you are off on active duty serving your country, you cannot be sued, they cannot take a judgment against you, they cannot foreclose on your home, and there are a host of other protections for them.

They have those protections. Plus, when you come back, you can bankrupt against any of the debts you may have. If you make above median income, the judge can consider and should consider military service as a special circumstance. I think that is the right way to do it. I believe we did the right thing on that issue.

It really hurts me to hear people suggest, because they are unhappy with this bill and they filed an amendment that was not adopted exactly like they wanted it, that we who adopted the amendment to deal with this issue are insensitive to military men and women serving America.

Those are some of my thoughts, Mr. President. I think the bill does a lot of good. There are some things about which we have not talked. We had the critics dominate the debate

and point out everything they think is wrong and offer amendments. Senator *Feingold* has 15 amendments. Remember now, this is the fourth time this bill has been on this floor. The last time, we debated over 2 weeks on the legislation with amendment after amendment. This time we are going to be 2 weeks on it. I think we debated 2 weeks the other two times. There has been extensive debate. We have had debate and amendments offered in the Judiciary Committee likewise on these issues where Senator *Feingold*, Senator *Durbin*, and others serve.

We have tried to be fair and open. Everybody has had a chance to raise their concerns, but it is time to vote and get this bill in the barn and move on to other issues.

I want to mention a couple points that are so important for people in America who are having a hard time. Women and children who are victims of divorce and separation, deadbeat dads--what about that issue?

In the course of our deliberations, we made a bipartisan commitment to raise the top debts that arise from alimony or child support to the highest level of a bankruptcy court. In other words, when there is a limited amount of money, the bankruptcy judge decides who gets paid first. In the past, they have always paid the lawyers and the court fees, and then they had some other things, and then women and children came along. We raised women and children to the top of the list. Of course, that is one reason they are unhappy with the bill--trust me. We also put some other provisions in it to reduce some of the litigation that goes on in bankruptcy court.

We raised women and children to the top of the list. The National Child Support Group and the National District Attorneys Association that handles child support issues said it is absolutely a fact that women and children have a substantial benefit under this act. One person said it is a veritable wish list for helping women and children who are owed child support and alimony to collect those debts. And they get paid even above so many other people.

Also, I note that secured creditors are next, and the unsecured creditors, such as the credit card people, and those with personal notes and bills, such as your local gas station. Those debts come in as unsecured debts, and they are further down the list.

We do not raise credit cards above people. We actually raised women and children up to the highest group. So I think there are a lot of good things in it, including a requirement that people who want to pay their debts, cannot handle their money and manage it well, must attend a financial management course before being discharged from bankruptcy. We want to see people manage their money well, get rid of those credit cards, contain their spending and manage their money wisely. That is what we would like to see them do. That is what the bill requires.

It also says a person at least ought to talk with a credit counselor. These exist all over America. Many times they can help people manage their money. They get the whole family around the table, they talk honestly about what their financial situation is, what

their debts are, and how they would have to be paid back. They have the ability to call the bank, the credit card company, or the mortgage company and say: We believe this client could file bankruptcy, but if you will allow them to reduce their payment to you for the next year and pay down some of these critical debts they owe, we will get back to you in full speed. We will help them achieve that. We will work out a budget with them.

Many creditors agree to extend--some even forgive a part of their debts in order to help debtors so they do not have to file bankruptcy, and they learn something in the process. They do not have to go into credit counseling. They can go straight to the lawyers and file bankruptcy in the traditional way. I think some may decide that maybe this is the better alternative for them.

If they go in response to one of those late night ads on television, or one of those newspaper ads to the bankruptcy mill, they are not going to get that information in most instances, although some lawyers, I am sure, do give them advice.

Mr. DURBIN. Will the Senator yield for a question?

Mr. SESSIONS. Yes.

Mr. DURBIN. We are having an exchange, and maybe since we are both in the Chamber we can at least come to an agreement on our disagreement. And I will yield some of my own time if it reaches the point where the Senator thinks it is taking advantage of his time.

Mr. SESSIONS. I was about to yield the floor, but, please, go ahead.

Mr. DURBIN. If the Senator would stay for a few moments, I would like to see if we can get to an agreement on our disagreement.

Right now, under current law, when I go into chapter 7 filing for bankruptcy, I am bound by the requirements of the Bankruptcy Code under section 521 to file a list of my creditors, unless the court orders otherwise, a schedule of assets, liability, current income, current expenditures, and statement of debtor's financial affairs and more when it comes to consumer debt currently. That is what happens when one goes into bankruptcy court--and that is this sheath of paper--they have to fill these things out. These are the documents that get one into court.

Mr. SESSIONS. I would just add, one has to list those debts, and if they do not list them they are not discharged and they can still be liable for them. So the debtor has to list his or her debts.

Mr. DURBIN. So one has to be careful. They better put all of their debts down if they want to have them discharged.

Mr. SESSIONS. Right.

Mr. DURBIN. In comes the new law, and the new law says if one is below median income, that is the end of the story. They continue as currently required under chapter 7. They do not have to go through and prepare and file this means test which is required here because they are not required to.

Page 18 of the bill, no one can challenge a person if in the case of a debtor in a household of one person, the median family income of the applicable State is applicable. So this is the point that has been made over and over, again that having filed the basic documents in bankruptcy, if it is then established that one is below the median income, end of the story. This bill does not apply. That is the way I understood it.

My amendment is trying to clarify it to make sure that is the way the Senator understands it. In other words, if I have done all of the basic filing and I disclose my monthly income and I am below median income, then I do not have to fill out the forms for the means test; it does not apply to me.

I quoted the Senator earlier, Senator *Frist*, and Senator *Hatch*, who have all said that on the Senate floor. My amendment clarifies that and says that unequivocally, after someone has filed their basic documents, if they demonstrate their monthly income is below the median income, they do not have to fill out the forms for the means test as to what they can pay over the next 10 years. They are not covered by that.

Is that the Senator's understanding of what this law says?

Mr. SESSIONS. I think that is my understanding of it.

Mr. DURBIN. Well, my amendment is only trying to clarify that. That is all it is doing. What I just described to the Senator is to say unequivocally, if someone files the initial documents currently required under chapter 7 and demonstrates to the court that their monthly income is below a median income, they do not have to fill out all of the additional paperwork required in the means test, which is substantial and expensive. If the Senator feels as I do, that that is what the law says or should say, I hope the Senator will look at my amendment. It is not a trick amendment. It is just trying to clarify that point.

Mr. SESSIONS. I would be glad to review the amendment. It would appear clear to me that one does need to meet certain basic filing requirements.

Mr. DURBIN. Absolutely.

Mr. SESSIONS. So the income can be determined, and we did step that requirement up to require more in connection with income tax return filings and things of that nature.

I know the Senator is a member of the Judiciary Committee and has worked hard on this bill, so I respect his concern over this issue. I am not one who believes we have a problem, but I will be willing to look at it.

Mr. DURBIN. If the Senator would be kind enough to review my amendment, I would appreciate it very much.

I yield to the Senator.

Mr. SESSIONS. I yield the floor.

Mr. DURBIN. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MARTINEZ). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 89

Mr. FEINGOLD. Mr. President, I call up amendment No. 89 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment is once again pending.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Senator *Kerry*, who is the ranking member of the Small Business Committee, be added as a cosponsor to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, we have spent a great deal of time debating and trying to improve provisions of this bill that affect consumer bankruptcies. Most of my colleagues may not even be aware that this bill actually contains provisions that make significant changes to portions of the Bankruptcy Code that relate to small businesses. They may not realize it, but it does. Subtitle B of title IV of the bill is entitled "Small Business Bankruptcy Provisions," and I doubt more than a handful of people in this body have any idea what is in the subtitle.

The subtitle includes a number of new restrictions and requirements for small businesses that want to reorganize under chapter 11. That is right, these are requirements and restrictions for small businesses that do not apply to large companies. I was shocked when this came to my attention, but there it is in black and white, subtitle B, "Small Business Bankruptcy Provisions."

These are not provisions to help small businesses, as one might expect from a bill that is going through the Senate. No, these provisions penalize small businesses. They make it harder for small businesses to reorganize in order to survive.

Here is an example. Section 434 would require regular reports on the small business's profitability. They will have to report all kinds of things: profitability, cash receipts and disbursement, requirements to be in compliance with postpetition requirements, timely filing of tax returns, and ``such other matters as are in the best interests of the debtor and creditors."

This is a mountain of information. Mom-and-pop operations will have to spend a great deal of time pulling these reports together, and the reports probably will not even be useful. Creditors and judges examining a debtor's profitability rely on cash disbursements and receipts, not self-reporting, because they are more informative and less subject to manipulation. It seems to me these reports will not be of much use to anyone, but they will be quite burdensome for a small business to produce on a regular basis.

What is the penalty for failure to jump through this bureaucratic hoop? Dismissal. Again, not for large corporations, mind you, which have armies of accountants to handle paperwork like this, but for the small entrepreneurs who could be spending that time keeping their businesses afloat instead of producing these piles of paper for some government file which basically no one will ever use.

I do not want to have to go back to Wisconsin and have to explain to a grocery store owner who is already working late into the night, trying to pull her business through a financial crisis, that the Federal Government has decided to keep her even longer to put together a report that nobody even plans to read. I am very concerned, almost ashamed of this Chamber to think I would have to tell her that if she were a big corporation, if she were the big chain of huge grocery stores, then the law would not require this of her. It would not treat her this way.

Professor Elizabeth Warren wrote, when the same language was proposed during the 107th Congress:

A decision by Congress in 2001 that small businesses should bear greater costs, face shorter deadlines, file more papers and lose any flexibility that a supervising judge might provide is a decision to shut down small businesses simply because they are small.

That is what Professor Warren wrote.

I can see no justification for imposing burdens on small business in the bankruptcy code that will not be imposed on large corporations. It has always been our responsibility as legislators to protect small businesses. My amendment calls on us to fulfill that responsibility in a very significant way. It would simply strike a number of the provisions in title IV, subtitle B of the bill.

Small businesses are the backbone of the American economy. According to the Small Business Administration, small firms represent 99.7 percent of all employers and pay 44 percent of the total U.S. private payroll. Small businesses have generated from 60 to 80 percent of the net new jobs created annually over the last decade. I can't figure out why, for the life of me, we are trying to make life harder for small businesses.

What is particularly puzzling is that I have heard a number of my colleagues complain about the burdens that they believe federal regulations impose on small businesses. The head of the Small Business Administration recently testified before the Small Business Committee that "[s]ome of the heaviest burdens borne by small business in America are the result of unnecessary federal regulation and redtape." If my colleagues share that belief--and even if they don't--why would we want to impose further Federal regulations and red tape on small business chapter 11 bankruptcies?

The worst thing about this attack on small business is that it is utterly unprovoked. Another provision of this bill would impose harsh deadlines on small businesses seeking to reorganize under chapter 11, but these deadlines are apparently designed to solve a problem that doesn't exist. The bill's drafters perhaps believed, back in 1998, that chapter 11 offers a shelter for failing small businesses, allowing them to delay the inevitable and die a lingering death to the detriment of their creditors. But this is just not the case.

The bill would impose an arbitrary 300-day hard deadline for a small business to file its reorganization plan. But a recent study of small business bankruptcy cases by Professor Douglas Baird of the University of Chicago Law School and Professor Edward Morrison of Columbia Law School shows that this deadline is completely counterproductive. According to this study, more than half of small business chapter 11 cases that fail--in other words, those that are dismissed, or converted to chapter 7 liquidations--are terminated within 4 months of filing. Over 70 percent are terminated within 6 months. By 300 days more than 90 percent have already left the system. In other words, the 300-day deadline imposed by this bill will affect a very small percentage of small business plans that are actually bound for failure. It constrains the discretion of bankruptcy judges, without any apparent justification for doing so, since reorganization cases without merit are already being terminated in a timely manner.

Instead of protecting the system against abuse by small businesses doomed to eventual failure, this bill will punish primarily small businesses that would otherwise succeed. Professors Baird and Morrison found that of the small businesses that successfully reorganize under chapter 11, nearly 40 percent need more than 300 days to do so. In other words, the facts show that by 300 days, most failing small businesses have already failed but many viable small businesses are still struggling. We should be helping them, not terminating them. Forcing small businesses capable of successfully reorganizing into chapter 7 liquidation proceedings is bad for their creditors, and tragic for the entrepreneurs who will see their livelihoods and their hard work over years or even generations needlessly destroyed.

Compare the hard deadline in the bill to what happens in the bankruptcies of large corporations. United Airlines filed for chapter 11 protection in December 2002. That is over 2 years ago. And the court has continually allowed the effort to come up with a reorganization plan that the creditors can accept to continue rather than force the airline to liquidate. We still don't know what will happen in that case, but clearly it is worth trying to save that company, with all its employees and devoted customers. Why don't we want to allow the courts to exercise the same flexibility for small businesses? Are they just not as important as the big corporations like United? Is that the message the Senate is trying to send with this bill? I can hardly believe that my colleagues want to send that message. But this could have a big impact on the ability of small businesses across the country to survive, so I urge my colleagues to take a close look at this amendment.

These new burdens on small businesses are simply wrong. Congress simply should not be in the business of forcing viable small businesses into liquidation. And why are large corporations seeking to reorganize not similarly burdened? Do the bill's drafters think that large businesses are more important than small businesses, so we should give them extra time to reorganize?

There is an additional irony here when you compare the requirements we put on large and small businesses in bankruptcy that my colleagues should consider. Large companies are often subject to a variety of reporting requirements by the federal securities laws that are not applicable to small businesses. But the SEC often exempts companies in chapter 11 from those requirements. At the same time that large companies are often excused from onerous reporting because of their bankruptcy, this bill puts additional reporting requirements on small businesses. Where is the fairness in that?

If there is a crisis with small business bankruptcies, I am not aware of it. Professor Warren, one of the country's leading bankruptcy experts, was one of the authors of a 1999 Small Business Administration study. That study found that one-third of bankrupt businesses had less than \$100,000 in debts and almost four out of five had less than half a million dollars in debts. What is more, almost half--45 percent--of the small businesses had one or no employees when they filed for bankruptcy. These numbers don't give me any reason to think that small business bankruptcies are such a serious problem that we need to enact special provisions targeting them.

Bankruptcy experts tell me that these small business provisions are just crazy. But they have been in the bill forever, and most of the focus is on the consumer provisions when we debate this bill. Someone needs to stand up and say, "Wait a second. Why are we discriminating against small businesses in the bankruptcy laws?" I can't think of a single bill in my entire time in the Congress--over 12 years--where a single law on the books treats small businesses worse than big corporations. That is the opposite of what we usually do in this body. We always protect small businesses. Why is this bill any different?

When I offered this amendment in the Judiciary Committee, I heard two arguments against it. The first was that the provisions were recommended by the National

Bankruptcy Commission. This is a very odd argument, coming from the same people who completely ignored the commission's work on consumer bankruptcy issues and drafted a bill largely in response to the credit industry's recommendations. But more importantly, I have been told that the commission provisions were created by certain commissioners who wanted to reform chapter 11 for all companies, large and small. The big companies came in and said: "No, don't do that to us. Those deadlines are too restrictive." Here is what happened. The recommendation was amended to apply only to small businesses. There was no showing that there are more abuses in small business bankruptcies than in chapter 11 filings for large companies. Small businesses apparently just didn't have the right lobbyists watching the process. So they got stung by these wrongheaded provisions that live on year after year in this bill without anyone coming forward to explain why they are necessary or useful.

The second argument that came up in the committee was that small businesses support this bill. That is true, at least for some small businesses. But they don't necessarily support the particular provisions that I am talking about. They may not even know about these provisions. Small businesses, like large businesses, support the bill because it makes it harder for consumers to file for bankruptcy. But I doubt very much that they want the law changed to make it harder for struggling small businesses to reorganize under chapter 11.

This is an important example of how this bill fails to reflect lessons we have learned in the years since it was first proposed. Given the recent history of large-scale corporate bankruptcies and scandals, the way this bill cracks down on small businesses is not only misguided, it is shocking. We should be focusing our energies on the real problem, not penalizing small businesses.

I urge adoption of this amendment, and I hope that small businesses all across this country will be watching this debate. Those people who think the Senate is devoted to the interests of small businesses may be in for a rude awakening if this amendment is not agreed to.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DeWINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. *DeWINE*. Mr. President, I ask unanimous consent to proceed in morning business and I also ask unanimous consent that the time be counted as postcloture time.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. *DeWine* and Mr. *Dodd* are printed in today's **RECORD** under "Morning Business.")

Mr. *DeWINE*. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. *DODD*. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 67

Mr. *DODD*. Mr. President, I call up amendment No. 67.

The PRESIDING OFFICER. That amendment is pending.

Mr. *DODD*. Mr. President, this amendment--we have checked with the Parliamentarian--is a germane amendment to the bill. It was filed prior to the appropriate time, at the hour of 2:30 p.m. yesterday. Let me explain what this amendment does and why I am offering it this afternoon.

I am offering this amendment to enable parents to meet the needs of their children. We just heard our good friend and colleague from Ohio talk about Mothers Against Drunk Driving and the problems that occur with underage drinking. It is appropriate, after that discussion, that I offer this amendment because it is not unrelated, we know the difficulty of single parenthood, of how hard it is for single parents, the overwhelming majority of whom are women, to try to raise children on their own, all of the pressures of holding down jobs and managing a family. It will not come as any great surprise to my colleagues to know that a significant percentage of underage drinking and children who have problems with the juvenile justice system and other related issues come from broken homes, unfortunately. The tremendous pressures of a single head of household holding down a job and keeping their family together is not easy.

This amendment I am offering today on this bankruptcy bill relates to these familial circumstances, and it comes in several parts. I am going to take a few minutes and explain this amendment and why I believe it is important.

Very simply, during the financial crisis of living through a bankruptcy, children should be protected to the maximum extent possible. That is my strong belief. I believe it is the belief of all of us. Regardless of one's politics or ideology, I think we all understand that when a family is going through bankruptcy, we ought to do what we can to protect the innocent. Whatever one's feelings may have been about the parents, about their responsibility or irresponsibility, children should not be penalized because of the sins or the faults of their parents. This amendment is designed to at least attempt, under those trying circumstances of a family going through bankruptcy, to protect those who are innocent--the children--to the maximum extent possible.

About 39 percent of those filing bankruptcy in the United States are single women raising children, almost 40 percent. About 29 percent, almost 30 percent of those filing for bankruptcy are men, and 32 percent of households filing for bankruptcy are married couples. So we are talking about 70 percent of those who are filing fall into the area of single parents and their problems related to it. While there may be some people who are trying to scam the system--and there certainly are, and I do not argue with that point at all--I believe most people do not file bankruptcy lightly. It is a highly emotional time and one of financial crisis.

The most common reasons for 90 percent of women filing for bankruptcy include medical emergencies, job loss, and divorce. Women are especially vulnerable because they tend to have lower incomes and fewer assets and are more likely to be caring for children on their own.

If my colleagues truly cared, and I believe they do, about protecting mothers and the innocent children who are caught up in the tremendously disruptive time of bankruptcy, I think they will end up supporting this amendment. At least I hope they do. If our colleagues truly care about marriage and strengthening marriages, they also would support this amendment. I cannot think of many more things more stressful on a marriage than filing bankruptcy.

My amendment covers four main areas to protect children during this turbulent and emotional time. The amendment would modify the means test to provide greater flexibility and reasonableness when calculating a debtor's ability to pay. Allowable expenses are broadened to ensure that parents, whether married or divorced, can still support their children as they live through a bankruptcy.

For example, the amendment would allow a single mother, recently deserted by her husband, raising children who has filed for bankruptcy to continue paying education expenses for her child. Let us say that the mother, being a religious person and from a family that had used parochial schools for generations, is struggling to keep her child in one of these parochial schools. In this case, her 10 year old son has gone to a parochial school since kindergarten. It is where his friends go. After being fairly shy and withdrawn, he has begun to thrive there, has developed close relationships with several of his teachers. The mother was able to obtain a hardship reduction in tuition from the archdiocese, reducing the tuition to \$3,500 a year.

Under the means test in the pending legislation, under our bankruptcy bill, this mother could not file chapter 7 or chapter 13 if she continued to send her son to parochial school. The means test allows only \$1,500 for tuition and any other education expenses--not enough for any religious school. We are not talking about some fancy prep school or boarding school; we are talking about a basic parochial school education, which in many areas of the country costs around \$5,000 per year, sometimes even slightly more. One of my neighbors told me that the parochial high school his son attends costs roughly \$8,000 a year.

The child did not file for bankruptcy. Why during this turbulent time should the child be ripped away from his circle of friends and moral mentors? This should be a time when the child needs his friends and trusted teachers the most, his circle of security, particularly during a time of separation by parents and a bankruptcy.

The amendment would allow expenses associated with employment, such as child care, and it would allow alimony and child support to be used as intended to cover the needs of children in the household. Particularly with children, there are emergency expenses that arise, and any means test ought to reflect that reality.

Second, this amendment would ensure that support payments and other funds, such as refunds from the earned income tax credit or child tax credit, intended for the current needs of children do not become the property of the bankruptcy estate with the corollary potential of being distributed to creditors. Money intended to support children and their needs should go to children who need it, not creditors, in my view. Why should the earned income tax credit or the refundable child credit be yanked away from supporting children so that the depth of poverty in which they may live becomes even greater?

Thirdly, the amendment enables debtors going through bankruptcy to keep personal property normally found in or around the home, excluding automobiles. This would ensure that in bankruptcy situations, families with children are able to keep, without fear of repossession, household goods that typically have no resale value.

Fourth, the amendment would ensure that debtors are not forced into bankruptcy court to seek to prove that some of these items have any value for resale and would necessarily have to be added, forced into bankruptcy court to prove these items were not luxury goods.

This amendment, which I had hoped the managers of the bill would agree to, it is more technical than anything else. I am sorry it is not being accepted, because it goes to the very heart of what many of us have talked about and tried to accomplish over the years since bankruptcy laws were first modernized and adopted over a century ago in 1903. This amendment deals with families and spouses, with child support issues and where they come into context of priorities when it comes to discharging responsibilities under the Bankruptcy Act.

In 2003, as much as \$95 billion in child support payments remained uncollected in the United States. It is a staggering sum of money and makes a huge difference to children growing up under adverse circumstances. It is estimated that one out of every other child living in poverty could be taken out of poverty if we were able to collect child support. Forget about appropriations or tax provisions we may adopt. If we could just collect the \$95 billion in unpaid child support, we could virtually eliminate poverty in one out of every two children growing up under those circumstances in the United States.

The bankruptcy bill before us is going to make it more difficult in many ways for those families out trying to find those spouses who owe this child support to make it available. Thus, I believe we are going to exacerbate the problem of children who rely on child support and families who rely on alimony being able to get those resources to minimize the effects that a divorce and separation can cause.

When one excludes the ability to receive the financial support necessary to make ends meet, the problem becomes, obviously, even more pronounced, and children bear the price. Again, I repeat, whatever one may feel about the parents and their irresponsibility, putting themselves and their families in jeopardy, we ought to be highly sensitive to what happens to children. It is not their fault that their parents are filing bankruptcy. I do not believe necessarily it is the parents' fault either in many instances, with medical expenses, with divorce and job loss being the reason a large percentage of bankruptcies occur.

Putting aside that for a moment, whether one agrees with those numbers, I do not know of a single person in this Chamber who would disagree with what I am about to say. Children should not have to pay the price of their parents' mistakes, and yet that is what we are going to do with this bill if we do not take some steps to try to correct the situation.

Since 1903, our Nation's bankruptcy laws have been guided by the firm principle that women and children must be first in the distribution line of available assets during a bankruptcy proceeding. For over a century, debt owed to children and families has been nondischargeable. Thus, if a head of a household fails financially, whatever remaining assets he has could be used to spare his spouse or ex-spouse and his children from impoverishment. We do this because those who are most vulnerable in our society deserve the most protection.

Today's bill, the Bankruptcy Abuse Prevention and Consumer Protection Act, would fundamentally alter this delicate balance achieved after a century of jurisprudence. We are altering the bankruptcy landscape for the benefit of credit card industry without understanding or recognizing what the consequences for families will be.

Women and children will be disproportionately affected by this legislation unless it is amended, which is what I am trying to do with the amendment now before us.

Whether as debtors filing for bankruptcy themselves or as creditors, three-quarters of a million women will be affected this year by the bankruptcy system, and it is estimated

that as many as 1 million women will be affected in the coming year. I agree with those of my colleagues who think the bankruptcy law needs to be reformed and tightened. I do not disagree at all with that. But in my view it is possible to enact legislation that tightens the laws without depriving debtors and their families of reasonably necessary living expenses to care for their children.

As this legislation is currently drafted, however, the credit card industry is protected, more protected than they have ever been. Unfortunately, families are not, in my view. This bill could turn the lives of children and families literally upside-down.

I think it is enough of an emotional roller coaster for a parent to file bankruptcy, but I think to elevate the needs of the credit card companies over the needs of children is simply wrong. I am greatly concerned about the means test, which requires the trustee in bankruptcy to review all chapter 7 cases for ability to pay debts under a rigid IRS formula devised originally for delinquent taxpayers, now to be applied to bankruptcies. These standards neither take into consideration differences in the cost of living from region to region, nor do they ascribe rational expenses for the use of individual families. In my view, these rigid standards will deprive children and families of reasonably necessary living expenses.

While moving child support to a first priority among unsecured creditors in chapter 7 sounds good, it is virtually meaningless, however.

Listen to this. Fewer than 4 percent of chapter 7 debtors have anything to distribute to unsecured creditors. Listen to that again. Fewer than 4 percent of chapter 7 debtors have anything to distribute to unsecured creditors. That is to say 96 percent of these debtors have nothing to give out. So saying under chapter 7, "you are first in line," means absolutely nothing except to 4 percent of those debtors. First in line when there is nothing means nothing. This is not a protection for women and families. It sounds good, but it is totally hollow when it comes to seeing to these children and these families whom, for 100 years, we have done a better job of protecting.

Additionally, because the means test increases the potential for dismissing chapter 7 cases, this bill channels many debtors into the 5-year, chapter 13 repayment plans, even though we know for a fact that two-thirds of such plans fail today. What will families live on during this time? What are proponents of this legislation going to do, go back to the time of Charles Dickens or debtors prisons?

Under chapter 13, the bill would require that larger payments be made to credit card companies. As a result, payments of past-due child support would be made in smaller amounts and over a longer period of time, thus increasing the risk that children will not receive the support they need and the full debt would never be paid.

Mothers and children would be in direct competition with credit card companies employing well-financed collection departments. How do you think mothers and children will fare when it comes down to competing? It is hard enough under the present system

for these people to collect the \$95 billion they are owed in one single year in child support, when they now are going to also have to compete, under chapter 13, with credit card companies who are well heeled and in a far better position financially, with teams of lawyers, to go after these debtors. I do not believe anybody could rationally conclude that a mother raising two or three children on her own, with limited resources, is going to be able to hire the lawyers to compete with the credit card companies going after the debtor husbands in these cases.

Those are the practical realities. So for children and families, this bill makes life a lot worse because of exactly what I have explained: we are moving people out of chapter 7, where there was nothing much to give anyway, into chapter 13, where it becomes far easier for larger amounts of these resources, larger payments, to be made to the credit card companies.

I am very concerned about the provisions of the legislation that make certain credit card debt nondischargeable. While the family support provisions added to this legislation are positive improvements, they have not cured the problems caused by the other provisions of the bill. In fact, they are negated by them, in my view. These are provisions that give far greater collection rights to the credit card lenders and fewer, in my view, to families and children.

This bill elevates credit card debt to a presumed nondischargeable status. If a debtor purchases items or services on credit from a single creditor within 90 days of bankruptcy, and such items exceed \$500 in value, these items would be presumed luxuries.

Listen to that again. Within 90 days, if you make purchases from a single creditor exceeding \$500, they are presumed luxuries--in 90 days--3 months.

Again, if you are a single parent with two or three kids, over 90 days \$500 is not a huge amount when you are talking about groceries or other essentials. Over a 3-month period--stretch it out and do the math--\$500 over 90 days is really, in 21st century dollars, even if you go to the best discount stores, not going to be enough to make it. Current law allows up to \$1,225 to be discharged within 60 days of bankruptcy. The bill as reported would limit it to \$500 within 90 days, as I have said. The amendment I will offer when the time comes to vote on it will allow not \$500 but less than \$1,200 to \$1,000 within 70 days. So it is less than 90, a bit more than 60. It is less than \$1,200 under current law but certainly more than \$500 to get you to \$1,000.

Again, I don't think this is any great luxury. You are trying to meet the needs of your family. To declare them to be luxuries--it doesn't seem a lot to me. Over a 90-day period it is not that hard to spend \$501 at Wal-Mart to meet kids' needs. Most would agree such purchases are not luxuries. In 90 days alone, a family with children could exceed \$500 on other expenses that arise with children.

My amendment requires creditors to prove at a hearing that such items were not reasonably necessary for the maintenance and support of the debtor and her dependents,

shifting the burden to creditors rather than the parents. If the creditor wants to make the case, let them do it, but don't lay the burden for \$501 on a single mother with young kids to hire lawyers to go in and make the case these are not luxury items. I shift the burden over to the creditors. If they want to make the case, they can do so.

I don't know what the proponents of this legislation are intending here, other than to protect the credit card companies at the expense of children. If you have \$501 of food, medicine, and clothing expenses, and it is incurred within the last 90 days, then you have to go to court and spend money to prove these are not luxuries--food, medicine, and clothing. This point is one I find stunning in its potential implications. By the very fact that you are in bankruptcy court, how are you going to hire a lawyer to go in and prove that \$501 was for necessities and not luxuries? We need to be far more practical than that, it seems. To go to Wal-Mart and buy food and clothes for your children, necessities they may need, that is considered a luxury if it is more than \$500.

If you are a single woman as a creditor, then you must wait until your ex-husband tries, or does not try, to defend a similar purchase. If he is unsuccessful, there will be less money for him to pay child support.

So on either side of the equation, if you are the woman raising children on your own, either as a debtor or a creditor, this places tremendous burdens on your family. If this section is sustained in the bill, then I urge the President to veto it, which I am told he would not do, but I hope he would. This legislation, regardless of what else is here, I think putting credit card debt ahead of kids is just wrong.

I think all my colleagues are probably familiar with the popular TV ad where a father takes his son to a baseball game, they rack up maybe \$100 in costs--tickets, parking, hot dogs, sodas, maybe a popcorn to share and a small souvenir. The tag line in the commercial says: ``Cost of the memory--priceless."

What the commercial doesn't tell you about is the memory may be priceless, but if the next day that dad is unlucky enough to lose his job, have a heart attack, incur enormous hospital expenses without health insurance, and can't make his minimum payments on time, the credit card companies are only too happy to turn priceless into pricey. Unfortunately, pricey for the family with finance charges, overcharges, penalty fees, and other means, can turn a dream into a nightmare.

This bill allows families to take a backseat to lenders, if lenders say their claims are secured by the debtors' property. For the first time in over 100 years, we have allowed these heretofore unsecured creditors to get into the bankruptcy courthouse. Currently, child and family support, taxes, and student loans are not dischargeable debts. For the first time in a century, the proposed legislation before us would bring into this unique category these other creditors--i.e., credit card companies--which will make the competition for scarce assets that much more fierce. These creditors have historically been unsecured because they have received the benefit of high interest and finance charges. Now they are becoming effectively secured creditors.

With all of these concerns in mind, the amendment I am offering this afternoon seeks to address some of these problems. I hope these efforts will win broad bipartisan support. I have been terribly disappointed that there has been no willingness to even talk about some of these amendments. I don't know why we can't do this. This is not the end of the session. We are only in the month of March.

This is an important bill. I understand that. But it is going to have huge implications for years to come if we don't sit down and listen to each other carefully to try to work out some of these matters so we can put a bill together. Yes, it may require a conference; it may require some negotiation. But isn't that a wiser course to follow than to rubberstamp a proposal because the other body doesn't want to sit down in conference on the bankruptcy bill, particularly when we are talking again about the most vulnerable in our society; that is, our children?

Again, I emphasize what I said at the outset. We are talking about the innocents here. I don't want them to fall prey to the claim that people taking bankruptcy are guilty of something somehow.

Again, if you accept the notion that most people who file bankruptcy are not doing so lightly, I don't know of anyone who likes to admit they are so messed up in every way possible that they put themselves in that situation. Are there people who take advantage? Yes. I know that is true. As we try to cure that problem, let us not create more problems for those who through no fault of their own find themselves in that situation; and, even worse yet, those who are completely innocent who find themselves so disadvantaged that the ability of parents--particularly single women raising children--to find it harder and harder to collect those child support payments they desperately need to lift these children out of poverty, to make ends meet in the 21st century, with companies going bankrupt every day. We must see to it that those families who are already going through an awful lot don't find themselves going through even more.

This amendment is a modest attempt to readjust this section of the bill, to inject some practicalities, to say that as we consider the rights of credit card companies we are not going to forget the rights of children, so we will put some reasonable ceiling in here to make it possible for everyone to be a winner, so people can go to bankruptcy court to get themselves out of debt, get on their feet again, see to it that creditors are going to have an opportunity to collect the obligations that are owed them, and not penalize those who ought not be a part of this debate in any consideration.

I urge my colleagues to think about these amendments. I know it means changing the bill. I know it may mean going to a conference for a day or two. But I urge my colleagues to at least look at these proposals. If they make some sense, as some of them do, can't we sit down and try to resolve some before we go ahead and pass a bill that I think many may regret down the road when we consider the implications for those who are going to be adversely affected by this legislation?

I also would like to add as part of the **RECORD** a couple of pieces of correspondence that speak to these particular issues. One is from the National Women's Law Center, a letter dated February 23, 2005. I will not read the whole letter. Let me read a couple of paragraphs, because they go to the heart of what I am talking about here.

The letter reads:

S. 256 would make it harder for women to access the bankruptcy system because the means test requires additional paperwork of even the poorest filers, harder for women to save their homes, cars and essential household items through the bankruptcy process and harder for women to meet their children's needs after bankruptcy because many more debts would survive. The bill also would put women owed child or spousal support who are bankruptcy creditors at a disadvantage by increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others. The bill would set up an intense competition for scarce resources between mothers and children owed support and these commercial creditors during and after bankruptcy.

The letter goes on.

I ask unanimous consent that the letter from the National Women's Law Center be printed in the **RECORD**.

There being no objection, the material was ordered to be printed in the **RECORD**, as follows:

NATIONAL WOMEN'S LAW CENTER,

Washington, DC, February 23, 2005.

Re oppose S. 256, the Bankruptcy Act of 2005.

DEAR SENATOR: The National Women's Law Center is writing to urge you to oppose S. 256, a bankruptcy bill that is harsh on economically vulnerable women and their families, but that fails to address serious abuses of the bankruptcy system by perpetrators of violence against patients and health care professionals at women's health care clinics.

This bill would inflict additional hardship on over one million economically vulnerable women and families who are affected by the bankruptcy system each year: those forced into bankruptcy because of job loss, medical emergency, or family breakup--factors which account for nine out of ten filings--and women who are owed child or spousal support by men who file for bankruptcy. Contrary to the claims of some proponents of the bill, low- and moderate-income filers--who are disproportionately women--are not protected from most of its harsh provisions, and mothers owed child or spousal support are not protected from increased competition from credit card companies and other commercial creditors during and after bankruptcy that will make it harder for them to collect support.

The bill would make it more difficult for women facing financial crises to regain their economic stability through the bankruptcy process. S. 256 would make it harder for women to access the bankruptcy system, because the means test requires additional paperwork of even the poorest filers; harder for women to save their homes, cars, and essential household items through the bankruptcy process; and harder for women to meet their children's needs after bankruptcy because many more debts would survive.

The bill also would put women owed child or spousal support who are bankruptcy creditors at a disadvantage. By increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others, the bill would set up an intensified competition for scarce resources between mothers and children owed support and these commercial creditors during and after bankruptcy. The domestic support provisions in the bill may have been intended to protect the interests of mothers and children; unfortunately, they fail to do so.

Moving child support to first priority among unsecured creditors in Chapter 7 sounds good, but is virtually meaningless; even today, with no means test limiting access to Chapter 7, fewer than four percent of Chapter 7 debtors have anything to distribute to unsecured creditors. In Chapter 13, the bill would require that larger payments be made to many commercial creditors; as a result, payments of past-due child support would have to be made in smaller amounts and over a longer period of time, increasing the risk that child support debts will not be paid in full. And, when the bankruptcy process is over, women and children owed support would face increased competition from commercial creditors. Under current law, child and spousal support are among the few debts that survive bankruptcy; under this bill, many additional debts would survive. But once the bankruptcy process is over, the priorities that apply during bankruptcy have no meaning or effect. Women and children owed support would be in direct competition with the sophisticated collection departments of commercial creditors whose surviving claims would be increased.

At the same time, the bill fails to address real abuses of the bankruptcy system. Perpetrators of violence against patients and health care professionals at women's health clinics have engaged in concerted efforts to use the bankruptcy system to evade responsibility for their illegal actions. This bill does nothing to curb this abuse.

The bill is profoundly unfair and unbalanced. Unless there are major changes to S. 256, we urge you to oppose it.

Very truly yours,

Nancy Duff Campbell,

Co-President.

Marcia Greenberger,

Co-President.

Joan Entmacher,

Vice President and Director, Family Economic Security.

Mr. DODD. Mr. President, I want to quote a letter from the Children's Defense Fund, again expressing their concern about these sections of the bill. I will read from this letter as well.

The Children's Defense Fund is writing to urge you to oppose S. 256, the bankruptcy bill, that would hurt many Americans facing financial problems through job loss, divorce, child rearing, lack of medical insurance, or predatory lending practices. This bill would inflict hardship on more than 1 million economically vulnerable women and families who are affected by the bankruptcy system each year. Medical emergency, job loss and family breakup are important factors which account for nine out of ten filing for bankruptcy. The bill would also hurt women who are owed child or spousal support by men who file bankruptcy. The bill would make it far more difficult for women to collect support because credit card companies and other commercial creditors will have greater claims to the debtor's resources during and after bankruptcy. Being first among unsecured creditors in chapter 7 bankruptcy is meaningless when over 95 percent of debtors have no resources to pay unsecured creditors.

In chapter 13, the bill would require larger payments to be made to many commercial creditors resulting in smaller payments to past-due child support over longer periods of time increasing the risk that child support debts will not be paid in full. And after the bankruptcy is over, more and more debts owed to commercial creditors will survive, and mothers and children owed support are not a match for the collection departments of the commercial credit industry.

S. 256 contains a number of provisions which would have a severe impact on families trying to regain their economic stability through the bankruptcy process.

The letter goes on. Those are pertinent paragraphs when it comes to the amendment which I am offering here today.

I ask unanimous consent that this letter be printed in the **RECORD**.

There being no objection, the material was ordered to be printed in the **RECORD**, as follows:

CHILDREN'S DEFENSE FUND,

March 3, 2005

Re Oppose S. 256, The Bankruptcy Act of 2005.

DEAR SENATORS: The Children's Defense Fund is writing to urge you to oppose S. 256, a bankruptcy bill that would hurt many Americans facing financial problems due to job loss, divorce, child-rearing, lack of medical insurance, or predatory lending practices. This bill would inflict hardship on more than one million economically vulnerable women and families who are affected by the bankruptcy system each year. Medical emergency, job loss or family breakups are factors which account for nine out of ten filings.

The bill would also hurt women who are owed child or spousal support by men who file for bankruptcy. The bill would make it more difficult for mothers to collect support because credit card companies and other commercial creditors will have greater claims to the debtor's resources during and after bankruptcy. Being first among unsecured creditors in Chapter 7 bankruptcy is meaningless when over 95 percent of debtors have no resources to pay unsecured creditors. In Chapter 13, the bill would require larger payments to be made to many commercial creditors, resulting in smaller payments of past-due child support over a longer period of time, increasing the risk that child support debts will not be paid in full. And after the bankruptcy is over, more more debts owed to commercial creditors will survive--and mothers and children owed support are not a match for the collection departments of the commercial credit industry.

S. 256 contains a number of provisions which would have a severe impact on families trying to regain their economic stability through the bankruptcy process. S. 256 would make it harder for women to access the bankruptcy system. Low and moderate income families are not protected from many of the bill's harsh provisions. Parents who desperately need to preserve their homes from foreclosure or prevent their families from being evicted, or keep a car to get a work, would find it more difficult to do so. And, when the bankruptcy process was over, parents already facing economic disadvantage would find it harder to focus their income on reasonable and necessary support for dependent children because many more debts would survive.

Passage of the bankruptcy bill would make it harder for families struck by financial misfortune to get back on track. It would benefit the very profitable credit card industry at the expense of the modest-income families who represent the great majority of these who

declare bankruptcy. Congress should not enact reform that puts women and children at greater risk. The bill is profoundly unfair and unbalanced. Unless there are major changes to S. 256, we urge you to oppose it.

Very truly yours,

Deborah Cutler Ortiz,
Director of Family Income and Jobs.

Mr. DODD. Mr. President, the Association for Children for Enforcement of Support is supporting this amendment and opposes the legislation. The American Association of University Women, American Medical Women's Association, the Business and Professional Women of the United States, the Center for Law and Social Policy, the Center for the Childcare Workforce, Child Welfare League of America, the National Council of Jewish Women, the National Organization for Women, the National Partnership for Women and Families, the YWCA of the United States--all are groups which support the amendment and oppose this legislation.

Again, I realize the hour is late. We are getting closer to passage of this bill. I don't think it is so late, however, not to try to make some modest changes in this legislation that I think would go a long way to providing some relief for families.

Again, this is one of the areas of law that is written into our Constitution. Article I, section 8 of the U.S. Constitution, drafted back in the 18th century, specifically provided and called upon the Congress of the United States to enact bankruptcy laws. To understand why they did so, go back and look at the Federalist Papers. They talked about doing it as an opportunity for people to get back on their feet again. That was the idea--to see to it that creditors could be compensated to the maximum extent possible, but that also those filing for bankruptcy would begin a new chapter in their lives, to get on their feet again.

It seems to me we ought to be trying to do that with this legislation, not only helping the creditors collect what is due them, but simultaneously making it possible for good people to get a fresh start.

If in the process of helping the creditors get paid we make it more difficult for people to get on their feet again, we are lacking the balance which I think we ought to be striking with this bill.

I urge my colleagues not to necessarily rely on what I have said here today, but to review these sections of the bill and ask yourself realistically whether in this day and age the kind of caps we are putting on, kind of forcing people into the chapter 13 category, if we are not exactly undoing what we have done for 100 years to modern bankruptcy laws.

The modern bankruptcy laws put not only families first but they also left them alone. If you were dealing with child support and alimony, once you paid those, or set up a

payment schedule, whatever is left over, you dispensed to your creditors, you were not only the first in line, you were the only one in line. This changes that. You can be first in line under this bill, but you are not the only one in line, and other people in line have far more resources and strength to be able to compete for those debtors' funds to compensate these creditors. It puts families at a disadvantage.

There are a lot of other reasons to be concerned about this bill. I know my colleagues care about children. I know they care about families. They want to see these innocents have a chance for a decent life. This bankruptcy bill, if not amended, will make it far more difficult to achieve those goals.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. **ALEXANDER**). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. *McCONNELL*. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. *McCONNELL*. Mr. President, I ask consent that at 5:45 today the Senate proceed to a vote on or in relation to the Feingold amendment No. 89, with the time equally divided in the usual form until the vote; provided further that no amendments be in order to the amendment prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. *McCONNELL*. I ask the action we just took be vitiated. I will wait until Senator *Durbin* gets to the floor and I will reoffer the consent agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. *McCONNELL*. Mr. President, I ask unanimous consent that at 5:45 today the Senate proceed to a vote on or in relation to Feingold amendment No. 89, with the time equally divided in the usual form until the vote; provided further that no amendments be in order to the amendment prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. *DURBIN*. If the majority whip would yield for a question, I have three germane amendments pending. I think others are in the same position, including Senator *Feingold*. It is my hope to move as quickly as possible to a quick, limited debate, for just very short periods of time, and then to vote on these amendments in an effort to keep the bill

moving forward. I ask the Republican whip whether or not there are plans to call any other votes today or early tomorrow.

Mr. *McCONNELL*. Mr. President, I might say to my friend from Illinois, we have been reviewing amendments. I am hopeful we can have some discussion between now and the vote about how we proceed from here.

Mr. DURBIN. I thank the Senator.

Mr. *McCONNELL*. I yield the floor.

Mr. DURBIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CRAIG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 89

Mr. CRAIG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. I ask unanimous consent that Senator *Feingold* have 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. I thank the Senator from Idaho.

Mr. President, we are about to vote on an amendment that will tell this Nation's small businesses whether we stand with them. This bill includes a number of new restrictions and requirements for small businesses that want to reorganize under chapter 11. These requirements and restrictions for small businesses don't apply to large companies. I was shocked when this came to my attention, but there it is in black and white: Subtitle B, Small Business Bankruptcy Provisions. And these are not provisions to help small businesses as one might expect from a bill that is going through the United States Senate.

No, these provisions penalize small businesses. They make it harder to reorganize in order to survive.

These new provisions are entirely unnecessary. There is no crisis in small business bankruptcies. And a new study shows that most failed attempts at chapter 11 reorganization are concluded within 300 days, which is the hard deadline in the bill. But 40 percent of reorganizations that succeed take longer than 300 days. That means that this bill is going to make some small businesses fail that don't have to. That is an absurd result. Remember the United Air Lines Chapter 11 reorganization is over two years old and it is still going on. Why shouldn't small businesses get that kind of leeway if there is a chance they can pull through?

These provisions haven't received nearly the attention in this body that the portions of the bill that deal with consumer bankruptcies have received. We need to take these provisions out. Doing so won't have any effect on the core provisions of this bill. But it will prevent a real injustice from being done to small businesses. Forcing a small business to liquidate rather than reorganize is bad for creditors, bad for consumers, and bad for small businesses. I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, Chairman *Grassley* would ask for a no vote, as would Senator *Hatch*.

The PRESIDING OFFICER. The question is on agreeing to the Feingold amendment No. 89.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. ISAKSON.) Are there any other Senators in the Chamber desiring to vote?

The result was announced--yeas 54, nays 59, as follows:

[Rollcall Vote No. 30 Leg.]
YEAS--41

Akaka

Baucus

Bayh

Bingaman

Boxer

Byrd

Cantwell

Clinton

Conrad

Corzine

Dayton

Dodd

Dorgan

Durbin

Feingold

Feinstein

Harkin

Inouye

Jeffords

Kennedy

Kerry

Kohl

Landrieu

Lautenberg

Leahy

Levin

Lieberman

Lincoln

Mikulski

Murray

Nelson (FL)

Obama

Pryor

Reed

Reid

Rockefeller

Salazar

Sarbanes

Schumer

Stabenow

Wyden

NAYS--59

Alexander

Allard

Allen

Bennett

Biden

Bond

Brownback

Bunning

Burns

Burr

Carper

Chafee

Chambliss

Coburn

Cochran

Coleman

Collins

Cornyn

Craig

Crapo

DeMint

DeWine

Dole

Domenici

Ensign

Enzi

Frist

Graham

Grassley

Gregg

Hagel

Hatch

Hutchison

Inhofe

Isakson

Johnson

Kyl

Lott

Lugar

Martinez

McCain

McConnell

Murkowski

Nelson (NE)

Roberts

Santorum

Sessions

Shelby

Smith

Snowe

Specter

Stevens

Sununu

Talent

Thomas

Thune

Vitter

Voinovich

Warner

The amendment (No. 89) was rejected.

Mr. FRIST. Mr. President, for the information of our colleagues, we are making great progress on the bill. We are in the cloture period. We will not have further rollcall votes tonight, although we will keep the clock running in the cloture period and we will continue debate over the course of tonight. So we are here. We do encourage people who do want to speak on the bill to come and speak.

Tomorrow morning we will, after discussion on both sides of the aisle with the managers, have a series of stacked rollcall votes in the morning in order to not have rollcall votes tonight. But we are on the bill. The clock will continue to run, and debate should continue. There will be no rollcall votes tonight, stacked votes tomorrow. We would expect to finish this bill in all likelihood sometime tomorrow, late tomorrow.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I ask unanimous consent that the pending amendments be set aside so I may call up amendment No. 62, and then I will ask it be laid aside.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, will the Senator restate her request?

The PRESIDING OFFICER. The Senator will suspend. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from California (Mrs. **BOXER**) proposes an amendment numbered 62.

Mr. SESSIONS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Would the Senator propound her unanimous consent request again?

Mrs. BOXER. I think it has already been agreed to.

Mr. SESSIONS. I sought recognition.

The PRESIDING OFFICER. The Chair did not hear the Senator originally; however, precedent allows the Senator to reserve the right to object at this time.

Mr. SESSIONS. Will the Senator restate her unanimous consent? There was noise on the floor, and I just did not hear it.

The PRESIDING OFFICER. The Senator will suspend a moment.

Will the Senator from California restate her request.

Mrs. BOXER. I ask unanimous consent the pending amendment be set aside so I may call up amendment No. 62. It would then be my intent to ask it be laid aside. I believe we have an agreement that I be given 10 minutes in the morning, followed by a vote at a time both sides can agree to.

The PRESIDING OFFICER. Is there objection? The Senator from Alabama.

Mr. SESSIONS. I object at this time, but I would check with our colleagues, and if that is acceptable--I could check that, but I would object at this time.

Mrs. BOXER. Mr. President, I will suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 111 WITHDRAWN

Mr. DURBIN. Mr. President, I ask consent my pending amendment No. 111 be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 62

Mr. DURBIN. Mr. President, I ask unanimous consent the pending amendments be set aside so that Senator *Boxer* may call up amendment numbered 62.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. *Boxer*] proposes an amendment numbered 62.

Mrs. BOXER. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for the potential disallowance of certain claims)

On page 132, between lines 5 and 6, insert the following:

SEC. 234. DISALLOWANCE OF CLAIM IF BASED ON EXTENSION OF CREDIT TO CERTAIN INDIVIDUALS UNDER 21 YEARS OF AGE.

Title 11, United States Code, as amended by this Act, is further amended by inserting after section 112 the following: ``§113. Disallowance of claim if based on extension of credit to certain individuals under 21 years of age

``(a) *In General.*--In making a determination of whether to disallow a claim under this title, the court shall consider if the claim is based upon an extension to an individual of unsecured credit and the factors listed in subsection (b) are present. The factors listed in subsection (b) may be the basis for a disallowance of a claim under this title.

``(b) *Factors.*--The factors under this subsection are the following: if the individual, at the time unsecured credit was extended--

``(1) was under 21 years of age;

“(2) did not have a co-obligor on such unsecured credit who was a parent or spouse of the individual;

“(3) had an income level that was below or at the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))); and

“(4) already had 6 or more unsecured credit cards.”.

Mrs. BOXER. I ask unanimous consent the amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I thank my colleagues very much.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate resumes the bankruptcy bill tomorrow morning, the Senate begin 10 minutes of debate equally divided on each of the following amendments in the order mentioned below; provided further that following that debate the Senate begin a series of votes on or in relation to the amendments in that same order; provided that no amendment be in order to the amendments prior to the ordered votes. I further ask that there be 2 minutes equally divided for debate between the votes after the first vote and, lastly, that all votes in this sequence after the first vote be limited to 10 minutes in length.

The amendments are Durbin, No. 110; Harkin, No. 66; Boxer, No. 62; Dodd, No. 67.

I further ask unanimous consent that notwithstanding the adjournment of the Senate, all time overnight until the Senate resumes consideration of the bill be counted under the provisions of rule XXII.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, my amendment, cosponsored by my friend and colleague, Senator **CANTWELL**, would greatly assist the many victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened by summary eviction as a result of filing or bankruptcy. I ask unanimous consent that the text of our amendment be printed in the **RECORD** after my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEAHY. The connection between domestic violence, economic abuse, and housing is overwhelming. Women and children who are fleeing domestic violence make up a significant portion of the homeless population. According to the United States Conference of Mayors, 57 percent of cities surveyed identified domestic violence as a primary cause of homelessness.

These women and children are homeless because in their desperate attempt to leave their abusers they find themselves with few, if any, funds with which they can support themselves. Victims of domestic violence have a tough time finding room at emergency homeless or domestic violence shelters, and often fail to find adequate housing because affordable, long-term housing is not available in so many communities. If housing is available there are often long waiting lists. Victims face unique causes of their financial hardships due to the fact that batterers frequently harass their victims at work, and survivors are often fired or cannot maintain steady employment resulting in losing the ability to pay for housing. Faced with the lack of stable housing, finances and services, victims must choose between life with an abusive partner and life on the streets.

Our amendment would provide leniency for women and children who are affected by domestic violence and would, in fact, help victims to move forward and start new lives. Without the threat of losing their housing, women and children who are survivors of domestic violence will not be forced to a situation where they are homeless or returning to their abuser.

This amendment would modify the bankruptcy code to ensure better protection for victims of domestic violence by granting them relief from summary eviction from their

rental housing. Relief may be granted only under the condition that the debtors certify under penalty of perjury that they are victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened through eviction. Our amendment would not allow families to take advantage of the system, but it will be a life-saver for those who would face danger if they lost their homes.

This amendment is supported by the National Coalition Against Domestic Violence, the National Network To End Domestic Violence and the Family Violence Prevention Fund. I ask unanimous consent to print in the **RECORD** letters from those groups voicing that support.

There being no objection, the material was ordered to be printed in the Record, as follows:

March 7, 2005.

DEAR SENATOR: As national organizations working to address the varied needs of victims of domestic violence, we urge you to support Senator Leahy's proposed amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, S. 256. This provision is essential for the many victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened by summary eviction as a result of filing for bankruptcy.

Economic abuse is an integral part of domestic violence. Abusers often assert economic control by forbidding their victims from working, giving them little or no access to family finances, or destroying their credit. Many battered women have current or former partners who actively interfere with their efforts to work, harass them at work, threaten them and their children, withhold transportation or childcare, or beat them so severely that they cannot work. These victims are sometimes pushed into filing for bankruptcy as a result of this abuse.

Evicting these victims from their homes not only exacerbates an already difficult situation, but also puts many families in direct danger. On average, it takes six to ten months to secure housing. During this time, victims would be forced to stay at emergency homeless or domestic violence shelters. Unfortunately, those shelters are often full; in 2003, 32% of the requests for shelter by homeless families went unmet due to the lack of emergency shelter beds available. Even when space is available, most shelters limit the length of stay to 30 days.

Faced with this lack of housing and services, victims must choose between life with an abusive partner or life on the streets. Studies indicate that victims of domestic violence often return to their abusers because they cannot find long-term or transitional housing. At the other extreme, more than 50% of homeless women and children are homeless because they are fleeing domestic violence. Once homeless, women are at high risk for experiencing further violence. Many studies have found that 90-100% of homeless women have been physically or sexually assaulted.

The tremendously negative impact of such evictions becomes greater when victims with children are forced out of their homes. Children without a home are in fair or poor health twice as often as other children, and have higher rates of asthma, ear infections, stomach problems, and speech problems. Homeless children are also more likely to experience mental health problems, such as anxiety, depression, and withdrawal. They are twice as likely to experience hunger, and four times as likely to have delayed development. School-age homeless children face barriers to enrolling and attending school, including transportation problems, residency requirements, inability to obtain previous school records, and lack of clothing and school supplies.

Individuals claiming relief under this provision would be required to testify, under penalty of perjury, that they were victims of domestic violence and that they or their children would be in physical jeopardy if they were evicted. Thus, this amendment will not allow families to take advantage of the system, but will be life-saving for those who would be in danger if they lost their homes.

We urge you to support Senator Leahy's amendment and provide this much needed assistance to domestic violence victims.

Sincerely,

Allison Randall,

National Network to End Domestic Violence.

Jill Morris,

National Coalition Against Domestic Violence.

Kiersten Stewart,

Family Violence Prevention Fund.

NATIONAL COALITION AGAINST

DOMESTIC VIOLENCE,

February 28, 2005

Senator **PATRICK LEAHY**,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: It is with great support that I write to you on behalf of the National Coalition Against Domestic Violence and the more than 3,000 local shelter programs that we represent to thank you for your efforts to assist those individuals that are or have been impacted by the vast epidemic of domestic violence. '

Women fleeing domestic violence make up a significant portion of the homeless population. According to The United States Conference of Mayors (December, 1999) 57 percent of cities surveyed identified domestic violence as a primary cause of homelessness. Therefore, amending the bankruptcy code, as proposed in S. 256, with a provision that provides leniency on persons who are affected by domestic violence would, in fact, help victims to move forward and start new lives. Without the threat of losing their housing victims will not be forced to a situation where they are homeless or returning to their abuser.

Victims of domestic violence often cannot find adequate housing. One very important--reason is that affordable, long term housing is not available in their communities. If housing is available there are often long waiting lists or the abuser is able to quickly locate and begin abusing the survivor at her new residence. Secondly, due to the fact that batterers frequently harass their victims at work, survivors are often fired or cannot maintain steady employment resulting in loss ability to pay for housing. Lastly victims of domestic violence are forced to remain in abusive relationships because of financial dependency and the lack of stable housing. The amendment to S. 256 recognizes that victims of domestic violence are in a dangerous situation and should not be forced from housing due their financial difficulties.

We commend you on your efforts to ensure that those who are affected by domestic violence are taken into consideration when the Senate reviews this legislation.

Sincerely,

Jill Morris,
Public Policy Director.

Mr. LEAHY. Congress must recognize that victims of domestic violence face dangerous situations and should not be forced from housing due to their financial difficulties. We cannot force women and children who have endured domestic violence from safe spaces that provide the stability needed to make a new life.

EXHIBIT 1

(Purpose: To protect victims of domestic violence who file for bankruptcy from summary eviction if their physical well-being is threatened)

On page 156, line 18, insert `` , unless the debtor certifies under penalty of perjury that the debtor is a victim of domestic violence whose physical well-being or whose children's physical well-being would be threatened if relief from the stay is granted" before the semicolon.

REGULATING CREDIT CARDS

Mrs. FEINSTEIN. I appreciate the willingness of the chairman and ranking member of the Banking Committee to work with Senators **KYL, BROWNBACK**, and me on this important issue. And I understand that the Banking Committee has an interest in regulating credit cards.

I would like to state here, for the record, the key points of the agreement that we have arrived at:

Senators **SHELBY** and **SARBANES** have agreed to hold a hearing within 6 months on the substance of the amendment to the Bankruptcy Bill that Senator **KYL, BROWNBACK**, and I offered, on increasing notice to credit card holders who pay only their minimum monthly payments. I understand that this hearing will address a set of issues relating to credit cards and consumer rights. However, I also understand that Senators **SHELBY** and **SARBANES** will ensure that the substance of agreement, will be directly considered, and will be an area of focus, during that hearing, and that I will be afforded the opportunity to testify.

I understand that Senators **SHELBY** and **SARBANES** will work with me, with Senator **KYL**, and with members of the Banking Committee to ensure that this issue and my bill are carefully considered. My bill would give those consumers who make only the minimum required payments for 6 months detailed notice about the interest and length of time that it will take them to pay their own individual debt and interest.

Because the chairman and ranking member of the Banking Committee agree to take these actions, I will agree to withdraw my amendment. Do Senators **SHELBY** and **SARBANES** agree?

Mr. **SHELBY**. I absolutely agree with Senator **FEINSTEIN** and look forward to working with the Senator.

I say to Senator **SARBANES**, through the course of the debate on the bankruptcy bill it has become clear that there are many Senators who have concerns about numerous aspects of the credit card industry.

I want to indicate for the record that I share many of these concerns. Furthermore, I want to point out that I am aware of his particular concerns as well as those of Senators **KYL** and **FEINSTEIN**.

Mr. **SARBANES**. I thank Chairman **SHELBY** and Senator **FEINSTEIN**. I appreciate their interest in this matter and believe these are serious issues that merit further attention.

Mr. **SHELBY**. I fully agree and therefore I am willing to commit to holding a hearing in the Banking Committee to examine the practices within the credit card industry. I believe it is our responsibility to develop a complete record on these matters so that we can make informed judgments as to whether we need to take any specific actions.

I look forward to obtaining input from Senator **SARBANES** and from Senators **KYL** and **FEINSTEIN** in putting together this hearing.

Mr. **SARBANES**. I thank Chairman **SHELBY** for his leadership on this issue. I look forward to working with the Senator on developing a hearing at which the Banking Committee will receive testimony on credit card disclosures and other practices. A number of Senators have raised significant issues regarding the credit card industry and I appreciate the Senator's willingness to examine them and hear all interested Senators.

Mr. **SHELBY**. I agree.

Mr. **SARBANES**. I will support the Chairman's efforts.

END