We cannot allow our Government to pay people to destroy the testimony of other citizens in this country who have the right to speak on any rule as well.

After that happened, and after I mentioned it on the floor, I got to meet with the Assistant Secretary of OSHA and asked him about it. I asked him what the process was going to be like. I was a little curious as to whether they were going to try to push through this rule.

I mentioned they talk about how Liddy Dole mentioned it 10 years ago. But this rule did not get published until a little over a year ago. The first time it was published that anybody could actually look at a document and say this is what it says was less than a year before the time it was finalized—less than a year. The average rulemaking time on things much less difficult than ergonomics is 4 years. It takes 4 years to get a rule in place.

I contend, on a lot of these things, we should get together. We could agree on most of it and get things in place in a shorter time than OSHA can react. But the two sides don't talk, and separately they keep working on that one-tenth of 1 percent of the people who are bad to the bone.

I had this meeting with the Assistant Secretary of OSHA. I mentioned some of the things with which we had some concerns based on the hearings. He admitted he was an advocate for the rule the way it was.

It seems to me the agency ought to be listening to the comments. I do not see how you can be an advocate and still heed what people have said about what you wrote. I was concerned about that. I brought it up with him. I said: Can you give me any indication that you will make any changes in light of the testimony we have presented? He could not comment on that.

But I can tell you, now that I have seen the final rule that is published, he not only didn't listen to me, he didn't listen to the comments that were there. I have to tell you, the final rule that was published was far more difficult than the one on which we had to comment.

We cannot have that kind of activity in this country. What if agencies wrote a rule and published it, one with which they knew everybody would agree, then they took testimony, they took comments, they tabulated it—which was not done in the instance I am talking about, or at least I don't see how it could have been done—and then they published a final rule that was totally different from the one on which they took testimony?

That is why we need a CRA, to jerk people back to reality who think they know the way to do it and do not take into consideration the comments of the people of this country.

We have a document that is flawed. We have a document that was done the wrong way. We need to redo it.

You may also hear that the CRA prohibits reissuing the rule if it is ''substantially the same.'' That is absolutely correct. Probably another brilliant idea that was put in the bill by the bi-partisan co-sponsors. ''Substantially the same'' doesn't mean it cannot be done at all. It means that agency that jerked people around before cannot take the same thing, change a word, and put it back out as a rule again, which would put us in the continuous motion of overriding an agency's ill will. We would do it if we had to. But that is what the Congressional Review Act is designed to avoid. It should not be that difficult. With civility and bipartisanship, we ought to be able to arrive at a new approach, and not just on this rule.

Did you know, on the rules that OSHA has passed, we rarely revise a single one? Do you think technology has changed in 28 years? Do you think there is any need to change anything that was written 28 years ago? You had better believe there is, and we need to find a system to do it. I pledge to work toward a system that will allow safety for the workplace to get into place easier, quicker, and more effective than it is right now. I am sure business and labor will join in that effort to make sure we get more safety in the workplace.

Madam President, I yield the floor.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Iowa.

BANKRUPTCY ACT OF 2001—Resumed

Mr. GRASSLEY. Madam President, I am the author of this bankruptcy bill that is before the Senate. I know I am not the first to speak on it today. There have been proponents and opponents of it.

Also, let me make very clear that thus far today there have been both Republicans and Democrats speaking in favor of the bill that is before us.

I am very happy to be here to discuss this legislation. I thought last December, when we got it to the President, might have been the end of it and we would have a bankruptcy bill as the law of the land—the first major bankruptcy legislation to pass this body since 1978 or 1979.

Prior to Senator KENNEDY's remarks about the rules that we will be working on, Senator KENNEDY gave all of us an opportunity to see a list of organizations that oppose this bill. I think it is perfectly correct for Senator KENNEDY to express the views of anybody who opposes the bill and in support of his opposition to the bill. But there is a flip side of all of the membership of all the organizations that Senator KENNEDY said were opposed to this legislation. That flip side is that they all have members that, because some people in this country don't pay their bills, those who do pay their bills and buy products from companies that have creditors that have gone into bankruptcy, those very same members could, on average for a family of four, pay $400 more for goods and services that they would purchase because other people go into bankruptcy and don't pay their bills. There is no free lunch.

I hope we have as much concern about the well-being of the members of those organizations that do not go into bankruptcy and have to pay more because they are supporting legislation to maintain the status quo where it is easy to go into bankruptcy and let somebody pick up the cost of your going into bankruptcy.

That doesn't preclude that I believe firmly in the principle of a fresh start when people go into bankruptcy because of causes that are no fault of their own. Obviously, in those instances, there are costs to all of us who pick up the bill. But what this legislation is trying to change is the fact that there is an attitude out there of using the bankruptcy code for financial planning when you have some ability to repay. We are saying to those people who file for bankruptcy who have the ability to repay—and, albeit, they probably are a minority of all the people who file for bankruptcy—that it is immoral for them to use the bankruptcy code for financial planning. To put this $400 cost every year that other people pay for their goods and services who do not go into bankruptcy, we are saying to those people who can repay that they are not going to use the bankruptcy code for financial planning, and they are not going to get off scot free.

I hope those who look at the long list of organizations that oppose this legislation—by the way, I could put up a chart that would have a long list of organizations supporting this legislation; I am not going to do that. But for those who view those that are against it, remember that they have members that are also hurt because there is abuse of the bankruptcy code.

I am glad we are now proceeding to consideration of this bankruptcy bill, S. 420. This bill has been long in the making. As we all know, we have been working on it for two Congresses now. Prior to those two Congresses, I worked on legislation establishing a study commission made up of experts in bankruptcy to suggest to us changes in the bankruptcy code because we saw a skyrocketing of the number of people going into bankruptcy, having reached a peak of 1.4 million people; and that happening during a time of good economy as well.

Besides passing this legislation in the two Congresses, we have given this bill very adequate study by holding numerous hearings in the Judiciary Subcommittee on Administrative Oversight and the Courts which I chaired prior to this Congress. We have the published transcripts of these hearings. They are available to the public and any Senator who is interested in looking at how thoroughly the committee has been considering this legislation.

The need for bankruptcy reform has been debated on this floor at length. In

fact, this bill should have been enacted last year but was pocket vetoed at the last minute by President Clinton.

The bill we consider today with a new number, S. 420, and a new title, the ''Bankruptcy Reform Act of 2001,'' is practically identical to last year's bankruptcy reform conference report that passed out of the Senate by an overwhelming bipartisan vote of 70–28. The only exception is we have made a few changes in this new draft to accommodate members of the Democrat Party.

There was strong bipartisan support in the last Congress. That strong bipartisan support continues to this very day. So it is high time that we get the job done and get this bill to the President; this President will sign it.

I want to give some background on the development of this bankruptcy legislation. In the 106th Congress, Senator TORRICELLI and I worked very closely together on bankruptcy reform. Senator TORRICELLI, a Democrat, and I addressed many concerns and negotiated many compromises. We were able to pass out of the Senate the Grassley-Torricelli bill by a vote of 83–14. The Senate then approved the bankruptcy conference report by the vote I mentioned earlier, but I want to emphasize how bipartisan it was—70–28; 53 Republican Senators, 17 Democratic Senators voted for the conference report.

But then, as I indicated, President Clinton pocket vetoed this bill. Congress had adjourned, so it did not have an opportunity to override that veto last December. So here we are again trying to pass bankruptcy reform.

My Democratic colleagues—Senators TORRICELLI, BIDEN, JOHNSON, and CARPER—have joined Senators HATCH, SESSIONS, and me on this bill, S. 420, the Bankruptcy Reform Act of 2001. We hope to get additional cosponsors from both sides of the aisle. As you can see, there is strong bipartisan support for this bankruptcy bill, just as there has been a long history of bipartisan support for bankruptcy reform ever since I have been in the Senate.

I note for the record that I believe we have really bent over backwards to try to accommodate Senators' concerns with the bill's process in this Congress. I do not think it is any surprise to anyone that my position is that the bankruptcy bill is unfinished business from the last Congress. I think the large majority of us in the Senate believe that is the case, that it is unfinished business.

The bill, being pocket vetoed, had to start over again this year. And here we are. Of course, it was really too bad we could not get the job done last year, considering the pocket veto.

So at the beginning of this Congress, I reintroduced the bipartisan conference report with no changes—no changes—exactly the same bill. The reason I did this was not necessarily because the conference report was exactly the way I would have written the legislation, but because I felt compromise is necessary. And that conference report, with the bipartisan support that it had, was negotiated as best it could be. We had reached many carefully crafted compromises. And that bipartisan product ought to be our starting point this time.

So I introduced that as S. 220, the same bipartisan bankruptcy conference report language of last year that 70 Members of this body supported. I had that bill held at the desk so we could proceed expeditiously on this matter. I did not think, with all the work that had been done on it over the last 4 years—with only a Presidential veto, a pocket veto at that, standing in the way of it being the law of the land—that there was much point in going through the process of hearings and committee action before we worked on it here. This was one way we could expedite the process; save all the busy Senators some time, and move on with something that had such broad bipartisan support.

But always in a body of 100, where consensus is what it takes most of the time to get anything done, we had Senators with concerns about this process. So the Judiciary Committee, of which I am a member, accommodated those concerns by not only, once again, holding a hearing on bankruptcy reform and the bill, but also by holding a markup of the language in S. 220.

So the Judiciary Committee accepted several amendments that were not in the conference report of last time. And that marked-up version of the bankruptcy bill was reported out of committee and reintroduced with a new number. So we went from S. 220—the exact bill that President Clinton pocket vetoed—to now S. 420. That is what we have before us.

So I hope this clarification on history and on the procedural process of this bill will show that, one, the bill is a bipartisan effort; two, that we have been working on bankruptcy reform for a very long time and have gone over all the fine points of this bill in great detail; and, three, that we have bent over backwards to allow a fair process to move this bill forward at this time.

Let me now discuss the merits of bankruptcy reform and why this bill is necessary to solve the problems we have before us of a historically high number of bankruptcies—1.4 million bankruptcies in 1 year—maybe last year just a little bit less than that but now maybe coming back up. It is a problem with which we should deal.

There have been a large number of bankruptcies in good times. And remember, the last 20 years—covering the Reagan administration, the Bush administration, the Clinton administration, and now the Bush administration—have been the best economic years ever in the history of America. Yet during this period of time we had 1.4 million bankruptcies in 1 year, compared to 300,000 bankruptcies back in the early 1980s. Something is wrong, and this gives us an opportunity to correct what is wrong.

To emphasize, when the Senate last considered this bill just 3 or 4 months ago, we heard a lot about the declining numbers of bankruptcies from that top of 1.4 million that I talked about because the opponents of this compromise bill were pointing to this temporary downward spike in the number of bankruptcies to say that there was no need for any bankruptcy legislation.

I refer my colleagues to a Wall Street Journal article dated December 1, 2000, which predicted that consumer bankruptcies will rise by 15 percent this year. According to the article, one expert referred to the predicted upswing in bankruptcies as ''the verge of another flood.''

Opponents to the bill act as if there is nothing to worry about. But the fact is, we have a bankruptcy crisis on our hands. Things are more than likely going to get worse. We need to pass this bill, and we need to pass it right now.

The Bankruptcy Reform Act before us will help the American people and the economy. With the economy slowing down and a declining stock market, Americans are anxious about their economic future. If we hit a recession without fixing the bankruptcy system, we could face a situation where bankruptcies spiral out of control even beyond what they were in the good times of 1998, 1997, and 1996.

The time to act is now, before any recession is in full swing—not to send a signal to those people who legitimately, for the past 100 years, had a reason to have a fresh start. We do not want to stop those people in debt from going to bankruptcy court because of situations beyond their control. No, it is not to stop that. But before we get into this recession and too many people want to further use the bankruptcy code as part of their financial planning, we want to stop those who can repay some of their debt or all of their debt, that they know they are not going to get off scot-free.

I will address how this bill will change the way bankruptcy is being treated in the United States. Simply put, bankruptcy is a court proceeding where people get their debts wiped away. Every debt is wiped away through bankruptcy. When this happens, for every debt that is wiped away, someone loses money. That is not Washington nonsense. That is good old American common sense.

Of course, when someone who extends credit has their obligation wiped away in bankruptcy, they are forced to make a decision. Should this loss simply be swallowed as the cost of doing business and absorbed by the owner or do you raise prices for other customers to make up for your losses? Either way there is no free lunch; somebody pays.

Presently, when an individual files for bankruptcy under chapter 7, a court proceeding takes place and their debts are simply erased. Every time a debt is

wiped away through bankruptcy, someone loses money. When someone loses money in this way, he or she has to decide to either assume the loss as a cost of business or raise prices for other customers to make up for that loss. When bankruptcy losses are infrequent, then maybe lenders just swallow the loss, but when they are frequent, lenders need to raise prices to other consumers to offset their losses.

If there are a million businesses out there that have to so deal, I would have to say there are a million answers as to how each one of those businesses might see a debtor getting their losses wiped away.

These higher prices obviously eventually translate into higher interest rates for future borrowers. We had an outstanding economist by the name of Larry Summers—also the last Secretary of the Treasury—testify before our Senate Finance Committee that bankruptcies tend to drive up interest rates. With the possibility of the economy slowing right now, we need to at this time fix a bankruptcy system that inflates interest rates and threatens to make the slowdown even worse. Bankruptcy reform will help our economy through lower interest rates.

The result of the bankruptcy crisis is that hard-working, law-abiding Americans have to pay higher prices for goods and services. S. 420 makes it harder for individuals who can repay their debts to file for bankruptcy under chapter 7 where those debts are wiped away. This would lessen the upward pressure on interest rates and higher prices. It is only fair to require people who can repay their debts to pull their own weight. Under current bankruptcy laws, one can get full debt cancellation in chapter 7 with no questions asked. The Bankruptcy Reform Act before us asks the fundamental question of whether repayment is possible by an individual. If it is, then he or she will be channeled into chapter 13 of the bankruptcy code which requires people to repay a portion of their debt as a precondition for limited debt cancellation.

The bill does this by providing a means test to steer filers who can repay a portion of their debts away from chapter 7 bankruptcy. The test employs a legal presumption that chapter 7 proceedings should be dismissed or converted into chapter 13 whenever the filer earns more than the State medium income and can repay at least $6,000 of his or her unsecured debt over 5 years.

In calculating a debtor's income, living expenses are deducted as permitted under IRS standards for the State and locality where that debtor lives. Legitimate expenses—such as food, shelter, clothing, medical, transportation, attorney's fees, and charitable contributions—are taken into account in this analysis as provided for under these IRS guidelines. Moreover, a debtor may rebut the presumption by demonstrating some sort of special circumstances.

Responding to the point that is always brought up against this bill—we have already heard it this afternoon—that somehow, regarding high medical expenses, you never get adequate consideration of that by the judge if you go into bankruptcy, I don't know what it takes to satisfy people on the other side whom I believe are using this medical expense issue just as an excuse because they don't want any bankruptcy reform. If writing off 100 percent of all medical expenses is not enough, would you be satisfied if we wrote a law that allowed you to write off 101 percent or 102 percent? When I say medical expenses under the IRS guidelines can be written off in making a determination of the ability to repay or go into chapter 13 and then repay part of your debt, I mean that they can be written off.

The means test takes into account a debtor's income and expenses and then, even beyond that, allows the debtor to show special circumstances which would justify adjustments to this IRS benchmark means test. In this way, then, the bankruptcy reform bill preserves the fresh start I have talked about for people who have been overwhelmed by medical debt or sudden unforeseen emergencies.

As stated by the General Accounting Office—not by Senator GRASSLEY but by the General Accounting Office—the bill allows for full 100 percent deductibility of medical expenses before examining repayment ability. This bill preserves fair access to bankruptcy for people who truly are in need.

So that I am crystal clear, people who do not have the ability to repay their debt can still use the bankruptcy system as they would have before. This bill specifically provides that people of limited income can still file under chapter 7. There is a specific safe harbor built in for these individuals so their debt can be wiped away as is done right now—the fresh start.

I repeat: There is a safe harbor for these poor people, but the free ride is over for those who have high incomes and who game the system and who don't want to repay their debt but can repay their debt; they are no longer going to get off scot free.

That brings me to the moral issue involved with bankruptcy reform. Somehow, I know that in 21st century America you aren't supposed to be judgmental about people. Let me say to you I think it is a sad commentary that I can get into trouble for being judgmental about people, but if I were to do the same thing, commit the same act, I would probably get away with it. That is a sad commentary.

There is this issue of personal responsibility. It has been one of the main themes of this bankruptcy reform bill. Since 1993, the numbers of Americans who have declared bankruptcy have increased over 100 percent. That is how you eventually get to that high number 2 years ago of one and four-tenths. While nobody knows all the reasons underlying bankruptcy crises, the data shows that bankruptcies increased dramatically during the same timeframe when unemployment was low and real wages were at an all-time high.

I believe the bankruptcy crisis is a moral crisis. People have to stop looking at bankruptcy as a convenient financial planning tool while other honest Americans have to foot the bill. It is clear to me that our last bankruptcy system must bear some of the blame for this crisis. A system where people aren't even asked to pay off their debts, obviously, contributes to the fraying of the moral fiber of our Nation and to the lack of personal responsibility. Why should people pay their bills when we have a system allowing them to walk away with no questions asked? Why should people honor their obligations when they can take the easy way out through bankruptcy?

I think the system needs to be reformed because it is fundamentally unfair. The Bankruptcy Reform Act before us will then promote personal responsibility among borrowers and create a deterrence for those hoping to cheat the system, to game the system, to use it for financial planning, to get off scot free.

The bill does more than just provide for a flexible means test. It gives judges discretion to consider the individual circumstances of each debtor to determine whether they truly belong in chapter 7 and then get the fresh start that we all agree they are entitled to if they are in this situation because of something beyond their control. But it also contains tough consumer protections that people on the other side of the aisle, correctly so, have brought to our attention that we ought to be doing something about.

We are going to have procedures in this bill to prevent companies from using threats to coerce debtors into paying debts which could be wiped away once they are in bankruptcy. That is not fair play, when we have activity such as that occurring.

The bill requires the Justice Department to concentrate law enforcement resources on enforcing consumer protection laws against abusive debt collection practices. It contains significant new disclosures for consumers, mandating that credit card companies provide key information about how much they owe and how long it will take to pay off their credit card debt by only making a minimum payment—just getting on a treadmill and never getting off.

Consumers will be able to get this information through a toll-free number, where they can get information about how long it will take to pay off their own credit card balances if they make only the minimum payments because we want to help people get off of that treadmill as well. We want to do it by educating consumers and improving the consumers' understanding of their financial situation.

Also, credit card companies that offer credit cards over the Internet will

be required, for the first time, to fully comply with the Truth in Lending Act. So claims that this bill is unbalanced for the creditor and against the debtor are wrong. There are enhanced consumer protection and information and education provisions to give the debtor more information—hopefully, to avoid bankruptcy in the first place.

Our bill makes changes that will help particularly vulnerable segments of our society. We have heard people against this bill—and, again, I think just because they don't want any change in the bankruptcy laws whatsoever, and maybe some of them even think we ought to make it easier to go into bankruptcy—bring up this issue about child support. It is one of their great contributions to the evolution of this legislation, that child support now is the No. 1 priority.

Again, as I said, in the case of these groups of people who are against the bill in the case of medical expenses, if 100-percent deductibility and consideration of 100 percent of the medical expenses isn't enough, should it be 101 percent or 102 percent? Again, if child support is the No. 1 priority, what more can I do for you? There isn't a number smaller than 1 for a priority when it comes to using the assets that are in bankruptcy to see that children are No. 1 in consideration. They ought to be No. 1 in consideration. So they have the highest priority.

I wish to make clear that the bankruptcy bill makes a significant improvement for child support claimants as well. This bankruptcy bill does not hurt them, as opponents try to claim. In fact, the organizations that specialize in tracking down deadbeat dads all believe this bill will be a tremendous help in collecting child support. The people on the front lines say that the bankruptcy bill is good for collecting child support. For example, the bill provides that parents and State child support enforcement collection agencies are given notice when a debtor who owes child support for alimony files for bankruptcy in the first instance—I should say, not in the first instance of bankruptcy but when they file for bankruptcy, this information is going to be made known to them right away because bankruptcy trustees are required to notify child support creditors of their right to use child support enforcement agencies to collect outstanding amounts due.

In addition, the bill requires creditors to provide the last known address of debtors owing support obligations upon the request of the custodial parent. Concerns being expressed by opponents to this bill then, in regard to this child support issue just do not hold water.

The Bankruptcy Reform Act before us also makes great strides in cracking down on the very wealthy individuals who abuse the bankruptcy system. If you listen to our critics, you might get the impression that the homestead exemption is one giant loophole, that we don't deal with it in this bill at all, and that somehow we are protecting the rich. Here again, we had the nonpartisan General Accounting Office look at the question of how frequently the homestead exemption is abused by wealthy people in bankruptcy. The GAO found that less than 1 percent of the bankruptcy filings in the States where there are unlimited homestead exemptions involving homesteads of over $100,000—and the number of States that fall into that category can be counted on the one hand. But in those States 99 percent of the bankruptcy filings are not abusive, according to the General Accounting Office. So there is no big loophole there. In fact, the provision in the bill with respect to homestead is a significant improvement over current law because there is presently no Federal cap on homestead exemptions in the current law.

Our bill changes that by requiring a person be a resident of a State for 2 years before claiming the homestead exemption.

Furthermore, there is a 7-year lookback provision which will allow our bankruptcy judges to review the debtor's activities for the past 7 years to determine whether the debtor was trying to shield assets through this homestead exemption.

This, quite frankly, is one of these very tough issues with which we have to deal. On this, I did not have to deal with Democratic Senators who think it ought to be tougher, but I had to deal with those within my own Republican caucus.

There was a lot of work that had to be done on this. It is a delicate compromise between those who believe the homestead exemption should be capped through Federal law and others who are uncomfortable with the uniform Federal cap because 150 years ago, their State constitution writers wrote a different provision.

I hope my colleagues will not believe it when others say the provisions of this bill that tighten up this exemption, regardless of the State constitutions, is a gaping loophole because it is not. The homestead provision in the bankruptcy bill substantially cuts down on abuses.

I wish to talk about another thing this bankruptcy bill does that is so important in the rural areas of America, particularly as it deals with the family farmer. Some may not know that the farmers across the country currently have no protection at all against foreclosures and forced auctions, and that is because chapter 12 of the bankruptcy code, which I wrote about 15 years ago, sunsetted last June. We thought President Clinton signing this in December would take care of that problem. Chapter 12 has expired leaving farmers without this last-ditch safety net.

The answer is that chapter 12 ceased to exist because opponents of bankruptcy reform stalled movement on this legislation last year so that it would be timely for President Clinton to pocket veto it after we adjourned in December instead of while we were still here, when we obviously had the votes to override it.

Last year's bill would have permanently restored chapter 12 for family farmers, but President Clinton did not think that was an important enough matter. This matter is too important to family farmers for us to be fooling around and not making chapter 12 permanent. It is the only chapter of the bankruptcy code that is not permanent law, but our bankruptcy bill goes further than just making it permanent.

The bill enhances these protections and makes more farmers eligible for chapter 12. The bill lets farmers in bankruptcy avoid capital gains taxes. This is important because it will free up resources to be invested in a farming operation that is trying to turn around rather than going down the big black hole of the Federal Treasury.

Farmers need this chapter 12 safety net, and we in Congress should be standing up for our family farmers. We can do our duty and make sure the family farms are not gobbled up by giant corporate farms, which happens when bankruptcies occur. We can give farmers across America a fighting chance. I hope the Senate does not give in to people who are opposed to this bill and want to fight bankruptcy reform just because they do not want any bill whatsoever and let them hurt the family farmer by stalling this legislation. It is time we do this for the family farmer.

In addition, patients in hospitals and nursing homes get protection under this bill. They deserve it and need it. In the last Congress, the Senate adopted these protections unanimously as an amendment I offered. Let me provide an example of what could happen—and it has happened. This came out in a hearing I held on nursing home bankruptcies.

I learned of a situation in California a couple, 3 years ago where bankruptcy trustees just showed up at a nursing home on a Friday evening and evicted the residents. The bankruptcy trustees did not provide any notice whatsoever that this was going to happen. There was absolutely no chance for the nursing home residents to be relocated. The bankruptcy trustees literally put these elderly people out into the streets and changed the locks on the doors so they could not get back into the nursing home.

This bankruptcy bill will prevent this from ever happening again. For the first time, we will be giving these deserving folks these protections. We set up an ombudsman to look out for their interests.

Getting back to some basics, the truth is, bankruptcies hurt people. It is not fair to permit people who can repay to skip out on their debts. Yes, we do preserve and must preserve fair access to the bankruptcy courts for those who truly need a fresh start. The bankruptcy reform bill that we will pass

does just that, but let those people who can over time pay their debts live up to their responsibilities. Let's restore a proper balance in the bankruptcy system. This bill does that. Enacting bankruptcy reform will help stimulate the economy by lessening pressure on prices because people who can pay their debts do not. Also, interest rates go up, as Secretary Summers has told us.

Passing meaningful bankruptcy reform also can help our economy and simultaneously contribute to rebuilding our Nation's moral foundation by emphasizing, once again, personal responsibility.

I urge my colleagues to support this bill which has a new number, S. 420, but not much changed from the bill that was at the desk, S. 220. This is a product of much negotiation and compromise. It is fair, it is balanced, and it is long overdue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I appreciate the opportunity to make some remarks on the bankruptcy bill that will be pending this week. I also express my admiration for the work of Senator ENZI in the health subcommittee on labor issues that he chairs and his intensive work and concern to make sure we handle repetitive motion injuries in the right kind of way.

In my personal view, it would be unwise for us to dump a regulatory burden on American business, one that has been estimated to cost as much as $90 billion, at a time when the economy is in a slowdown and we are not really sure about the science that would justify that and all experts tell us the regulations are incredibly difficult to write. In fact, they are not able to write them. I think we are right to heed Senator ENZI's advice.

Mr. President, one of the objections to the bankruptcy bill was expressed in a letter that has been circulated from 91 law professors who wrote to show their opposition to the bankruptcy bill. We are continually seeing our professors sign off on letters that appear to have some substance, but when you examine them, they are not sound. This is a very unsound letter.

Since it has been referred to by Senator KENNEDY in the past, and I think maybe earlier today—although I don't think he relied on it in depth here today—we ought to talk about those charges. In their letter, these professors claim to be representing the interests of children and women in divorce. They claim to be concerned about poor people who are bankrupt and they want to help them. So do I.

So let's listen to what they say their complaints are. I would like to talk about them. It is in many ways quite stunning how inaccurate their opinions are.

The letter from the professors says women and children will have to compete with powerful creditors to collect their claims after bankruptcy.

The fact is this bill subjects assets, such as homestead, household effects, and tools of the trade—these are assets that cannot be seized and sold in bankruptcy. These are assets that the person who filed bankruptcy can keep—their homestead and household effects and so forth. But for the purposes of children and women and past-due alimony, this law will give them greater power than ever before, and they can seize those. They can be seized for child support and alimony. That is clearly a superior position under this bill than before.

Wives and mothers will not have to compete with anyone before, during, or after bankruptcy for these key assets.

In addition, Philip Strauss of the San Francisco Department of Child Support Services—this is one of the agencies around the country that was formed to help women and children collect their child support and alimony from deadbeat parents, or those who refuse to pay—wrote to us and made a firm statement on this matter. He said competition between these creditors and child support claimants just doesn't happen.

As he said:

> No support collection professional that I know believes this concern to be serious. If support—

He means child support and alimony—

> and credit card creditors were playing on a level playing field, banks with superior resources might have an advantage. However, nonbankruptcy law—

This is the nonbankruptcy collection law that favors alimony and child support—

> has so tilted the field in favor of support creditors—

That is child support creditors—

> that competition with financial institutions for the collection of post-discharge debt presents no problems for support creditors.

Senator BIDEN said it was laughable at our hearing recently to suggest that this bill does anything but enhance the position of women and children who may be claimants in bankruptcy.

The letter from the professors says:

> Credit card claims increasingly will be excepted from discharge and remain legal obligations after bankruptcy.

The fact is this: Credit card debt that is incurred as a result of fraud is already nondischargeable under current law. This bill simply makes it slightly easier for creditors when a debtor has obtained the money from the creditor by fraud to win their case; only slightly more. They will still have to prove that the borrower—the debtor—defrauded them. And debtors who defraud creditors should not be able to discharge their debt in bankruptcy.

If somebody loans me money and I obtain that loan through fraud, why should I be able to go into bankruptcy court and never pay that person back the money I defrauded him out of?

That is the current law. That is historic law. This bill makes little or no change in it. It tightens it up slightly. If you have been defrauded, you will be able to collect your money.

The letter further says:

> . . . large retailers will have an easier time obtaining reaffirmations of debt that legally could be discharged.

The fact is that in order to obtain a reaffirmation under this bill, retailers will have to make sure that new and comprehensive disclosures are given. They will be required to disclose material terms of debt obligation before the creditor and debtor can reaffirm any discharged debt. Judicial review is required in certain cases. Thus, it will be much more difficult—not easier—for retailers to reaffirm or get a reaffirmation of a debt that is being discharged in bankruptcy.

I know this. I was asked to negotiate this very question on behalf of Senator GRASSLEY and Chairman HATCH. I met with the White House and Senator REED from the other side. We worked hard and came up with language that is not excessively burdensome on the court but really provides substantial new procedural protections from anyone who would think about reaffirming a debt.

The reason people reaffirm the debt is they may have a washing machine, and they have paid on it for a while. They would rather reaffirm and keep that machine than have it taken away. Sometimes they do it on automobiles and things of that nature. It is a perfectly voluntary thing.

Frankly, I thought the issue was greatly overblown. But we worked this out. We increased the control under the new bankruptcy bill that is before us today compared to what it was before. A vote to reject this bill is a vote to continue the less restrictive reaffirmation practices that prevail in the absence of this bill.

Again, it makes you wonder what these professors are writing about.

The letter says:

> Giving ''first priority'' to domestic support obligations does not address the problem . . . and that ''95 percent of bankruptcy cases make no distributions to any creditors because there are no assets to distribute. Granting women and children a first priority . . . permits them to stand first in line to collect nothing.

The fact is, the bill's means test will come into play only if the person filing bankruptcy makes more than the median income for the state in which he files. Only then will he be required to pay back some of his debt, and under that scenario his situation will be different from current law.

This bill's means test will place above-median income deadbeat dads into chapter 13—a 5-year repayment plan that will require them for 5 years under court-ordered direction to pay their money into court, and the first fruits of that money go to child support and alimony. That is a powerful incentive and guarantee that women and children will receive the support obligations due them.

The bill also will stop how chapter 13 is used today by deadbeat dads to delay or defeat their payment of child support—sometimes for as long as 5 years. This bill will strengthen the ability of women and children to receive their child support.

The letter goes on with another charge. It says: Under current law, child support and alimony share a protected post-bankruptcy position with only two other current collectors of debt—taxes and student loans. The bill would allow credit card debt and other consumer credit to share that position thereby elbowing aside women trying to collect on their own behalf.

The fact is, the bill only slightly expands what consumer debt is nondischargeable. The credit card has to be used for more than $250 worth of luxuries, and the debt has to be fraudulent to be nondischargeable. Even if you had a fraudulent debt of less than $250, it would be dischargeable.

Moreover, only alimony and child support claimants will be able to levy on the deadbeat dads' exempt assets, as I mentioned before, such as homestead and household furniture. Thus, mothers will not have to compete with the IRS, the student loan companies, credit card companies, or anyone else to attach exempt assets after bankruptcy.

Further, as Philip Strauss, a child support professional, said—he has 24 years of experience in collecting assets for women and children—

> No support collection professional that I know believes this concern to be serious.

I agree with Senator BIDEN. It is laughable. Really. State attorneys general will be helping women collect child support and alimony.

Further, this bill will provide more assets for distribution to women and children before, during, and after bankruptcy.

Before bankruptcy, debtors will have to attend a credit counseling session that will help put fathers on a budget, keep them out of bankruptcy, and keep them paying this alimony and child support in the first place.

I offered an amendment to this bill that says before a person runs down to some bankruptcy lawyer whose primary motivation will be to get his fee and file bankruptcy with the least possible cost and time on his part in the case, they should at least talk with a credit counseling agency. Many of them can show debtors how to establish a budget, how to prioritize their debt payment. They can call creditors and ask: Would you hold off for 2 months? Then we will start paying next month. Otherwise, my client would have to file bankruptcy. They are working marvelously well throughout the country to avoid bankruptcy, to teach families and deadbeat dads or others how to manage money more effectively, and actually preserve families because experts say fights over credit are the No. 1 cause of divorce in this country. That is a good provision in this bill that would not be enacted into law if this bill is not passed.

I go on to note that during bankruptcy, deadbeat dads will be required to pay all past due alimony and child support and to undergo court supervision for up to 5 years under chapter 13 as they pay their first priority alimony and child support claims.

After bankruptcy, it is more likely that a father who has undergone credit counseling, has been subject to 5 years of court-ordered supervision of his finances where alimony and child support were the No. 1 priority, and knows he cannot shield his exempt assets from alimony and child support claims, will be up to date on all his post-bankruptcy payments, including alimony and child support.

The letter further charges:

> [A] single mother with dependent children who is hopelessly insolvent and whose income is far below the national median income would have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of her ex-husband.

The fact is, although a prior version of the bill did require 3 years' tax returns to be submitted to the bankruptcy court—and there was good reason for that because people do not always tell the truth about their income, and 3 years of returns gives you some indication of what their true worth and financial ability is—but while it was in the previous bill, the conference report version, the present bill today that came out of committee only requires that 1 year's return be submitted. This bill only requires the current year's return be submitted, and even that obligation can be satisfied by a transcript of your return obtained from the IRS. These transcripts are free and promptly provided by the IRS.

Further, the bill relieves the obligation of filing even the current tax return if the debtor—the destitute mother, in this case—can show that she cannot file the return due to circumstances beyond her control. I think that more than answers that charge.

The letter further says:

> A single mother who hoped to work through a Chapter 13 payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children's clothes, even if it meant that successful completion of a repayment plan was possible.

The fact is, a single mother would only be placed in a chapter 13 repayment plan if, one, she was above the median income, and that is adjusted for family size—and for a family of four, the median income in my home state of Alabama is $47,000 a year—two, her income after deducting medical payments, private school tuition, and medical expenses exceeded the lesser of $10,000 or 25 percent of nonpriority unsecured debts—but at least $6,000; and special circumstances did not make completion of the payment plan impossible.

So there is an out for the judge. If he finds there are special circumstances that provide a hardship for a family, he can avoid this plan. Even then, if she did not want to pay for the worthless items of collateral, her plan needs only provide for their return to the creditor. Why should she have to keep a piece of furniture if she does not want to pay that debt on it, and it has been mortgaged?

The letter says:

> The homestead provision in [this bill] will allow wealthy debtors to hide assets from their creditors.
>
> The fact is, the current law presents two problems: One, debtors stuffing their cash into homesteads immediately before declaring bankruptcy, sometimes moving to another State that has a more favorable homestead law, to defeat the creditors; and, two, another problem is, wealthy people exempting their long-held homestead from the bankruptcy estate.

The Senate bill that preceded the conference report last year would have solved both of these problems with a $100,000 hard cap on all homestead exemptions. I supported that. Senator KOHL and I were the prime advocates of that amendment. I debated it on the floor, and we won that vote on the floor. The companion House bill that was passed by the House of Representatives would have solved neither one of those two problems. We solved both of them in our bill in the Senate.

So what about the bill that has come out of committee and is the bill before us today? The bill today solves the more egregious problem by providing, one, that all new equity added to a home within 2 years prior to filing bankruptcy in excess of $100,000 will be subject to the creditors and cannot be protected; and, two, if you move into a new State 2 years before filing bankruptcy, your homestead exemption is set by the law of the State you left.

So you cannot carry on the kind of effort that has been done in Alabama where a person leaves my hometown of Mobile and drives 50 miles to Pensacola, Florida, where they have no homestead exemption, puts all their money in a million-dollar house, files bankruptcy, and they do not have to pay their creditors because all their money is in the home. You would have to plan that at least 2 years in advance under this law. So there is no doubt, as Senator GRASSLEY has stated so clearly, that this law will be substantially more effective in cracking down on homestead abuse than current law.

We had problems. We had a number of people from Florida, from Texas, from Kansas, and some other States out West, whose State constitutions provided unlimited homestead protection for farmers and others. They did not want to give that up. They fought us tooth and nail, and it compromised the ability of this bill to even be passed. But by reaching a compromise on this language in the bill, it solved one of the two problems, the most egregious problem really, and we made progress over current law. We ought to pass this bill. To kill this bill would leave even the weaker current law in effect.

The letter further says:

Well-counseled debtors will have no problem timing their bankruptcies or tying up court in litigation to skirt the intent of [this bill's two-year look-back] provision.

The fact is, it will be very difficult for a debtor to plan 2 years ahead to place large amounts of cash into a homestead. Such planning, however, could establish a record of the debtor's intent to hinder or delay his creditors. If you can show they maneuvered over a 2-year period to establish a new homestead in a different State, or put extra money in there, then you have a remedy under this bill. If so, our legislation contains a 7-year look-back provision to bring any amount added to a homestead to defraud, hinder, or delay creditors back into the bankruptcy estate, used to pay off debtors of the estate.

So in conclusion, Mr. President, I reject the assertions in the October 30 letter by the anti-reform professors. This bankruptcy bill will place women and children in a better position than ever before. That is a major reason why an overwhelming bi-partisan majority of the House and the Senate supported this bill last year. And that is why we should pass it again this year, and the President should sign it.

I know there is a lot of talk about this bill being harsh and somehow unfair to poor people. But all debtors—all poor people filing bankruptcy—if the claimants are for child support or alimony, will be much advantaged.

The alimony and child support people will have much greater power under this bill to collect their money than under current law. Second, anybody making below median income for their State will not be affected by the means test and will not be converted to Chapter 7. And I do not know how many that is, but I would be willing to guess that at least 80 percent of the individual bankruptcy filings in this country are by people who make below median income. It is only a few at which we are looking. The same people who are concerned about those abusing the homestead law to defraud their creditors ought to also be concerned about doctors and other rich people who have run up a bunch of debts, bankrupt against them, and then the next year make $100,000 to $150,000 a year. By doing that, these people have effectively gotten out of their legitimate debts that could easily have been repaid by them. Make no mistake, that is the truth. You can go into bankruptcy court today, file under chapter 7 and if your income is $250,000 a year, wipe away the debt that you owe and, effectively, never pay your creditors. That is not right. It's an abuse. If you can pay part of your debts, you ought to.

We have come up with a bright line rule. If you make above median income for your State and you can pay the lesser of 25 percent or $10,000 of your debts over 5 years, you are required to pay at least a portion of those debts you can pay; in other words, you must file in Chapter 13. The judge will decide how much you pay and will set up a repayment schedule. In short, people should try to repay the debts that they owe. We don't need to create a bankruptcy system that is running out of control where lawyers are advertising night and day on the TV and in the free shopping guides in the grocery stores about how you can wipe out your debts and you don't have to pay what you owe.

When somebody fails to pay what they owe, whether it is to a hospital, whether it is to a doctor, whether it is to a bank, whether it is to a credit card company, what happens? It drives up the cost of those people's business. They have to raise the charges on the honest people who pay them.

There is no free lunch in this country. That is basic economics. There is no free lunch. If you don't pay your debt, then somebody else is going to pick up the burden.

We need to have a law that enhances our capacity to ensure people don't abuse bankruptcy; that if you are capable of repaying a portion of your debts, you do. That is fundamental and what most Americans do.

When I think about those families sitting around their kitchen tables right now worrying about their budgets, trying to decide whether or not they can afford to take vacation, and who ultimately decide that they can't because they have bills to pay - those are the people we ought to honor. Those are the people who demonstrate the kind of character and discipline that ought to be affirmed. We ought not to affirm people who make above the median income in America and who can easily pay back part of their debts, but who decide not to do so.

I don't believe you can assert one fact in this bill that is not fair and just. We have fought over this bill for 4 years. It has passed this body at least three times by overwhelming numbers. Unfortunately, it is not yet the law. I plan to listen carefully to the complaints about this bill that will surely be made on this floor, but frankly I don't believe that anybody's complaints will hold water.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

(The remarks of Ms. COLLINS pertaining to the submission of S. 455 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

A WEEK FOR WORKING PEOPLE

Mr. WELLSTONE. Mr. President, first of all, I haven't had a chance to review Senator COLLINS' legislation, but I will tell you that anything and everything that we can do that really nurtures and encourages small business we should do. The small businesspeople are a lot like family farmers. Everybody loves them in the abstract, but when it comes to access to capital and to the opportunities for them to grow, I think we can do much better.

I will tell you that in Minnesota—and I am sure it is the case in Maine—people are always more comfortable when the actual capital decisions are made by people who live in the community. They own the businesses there. I would put my emphasis on education and entrepreneurship at the community level. I thank my colleague for her work.

I am going to be quite brief because I have a feeling that over the next couple of weeks I won't be brief at all. This is going to be quite a week for working families, working people, in Minnesota and around the country. We start out tomorrow with a bang. We are going to have a resolution on the floor of the Senate that would summarily and permanently overturn OSHA standards that were designed to protect workers from serious and debilitating ergonomic injuries. We are talking about repetitive stress injuries and about 1.8 million workers who suffer from these disorders, 600,000 injuries so severe that people are forced to take off from work.

The terms of these injuries, such as carpal tunnel syndrome, tendonitis, and back injuries, sound familiar. I will give you one example, although there are many, and then I will make my larger point.

Kita Ortiz, a sewing machine operator in New York City, was 52 when her whole life came crashing down on her. She ended up with cramps in her hands so severe that she woke up with them frozen like claws. She had to soak her hands in hot water just to be able to move her fingers. This went on for 5 years. Terrified of losing her job, she suffered through agony beyond anything that any Senator can imagine. Finally, she had to give up her job. It took 2 years to get her first workers comp check. She lost her and her family's health insurance, and she tries to get by now on $120 a week on workers comp payments.

I will tell you something. This resolution is all about overturning our accountability as legislators, as Senators, to working people in this country, our accountability for their safety. I would bet that of the 1.6 million, 1.8 million workers who suffer from these injuries, well over 50 percent are women. I will just tell you that I believe part of the reason that Kita Ortiz is not so prominent in this effort is because to many people these workers and these injuries are just out of site, out of mind. But this is the most serious health and safety problem in the workplace.

We had OSHA spend 10 years to promulgate this rule and now we have this rush to judgment, where we are going to have 10 hours of debate, no amendments permissible—10 hours of debate to overturn a rule that was 10 years in the making based upon the heartfelt