I oppose the Smith amendment to the underlying Wyden amendment, and I also oppose the Wyden amendment.

In my view, both amendments are unfair in that they give an unfair advantage to government agencies at the expense of private companies in the event that California utilities wind up in bankruptcy. They ensure that a large Federal utility like Bonneville, itself the beneficiary of billions of dollars of Federal investment, and other utilities will be paid ahead of the banks, small renewable energy generators, natural gas companies, and other creditors.

Both amendments are not helpful in our current circumstance. The State of California and its utilities are trying desperately to keep the utilities out of bankruptcy. Without these amendments, they stand a good chance of succeeding. If the amendments are adopted, the utilities will almost certainly be forced to declare bankruptcy.

I also oppose the amendments because, in my view, they are unwise. The consequences of the three largest utilities in California going bankrupt are unknown, as is the rest of the State's economy and the rest of our Nation's economy. But it is clear that it will not just affect the ratepayers served by the three utilities, or even just the people of California. It will affect all Americans. As Chairman of the Federal Reserve, Alan Greenspan, testified several weeks ago, ''it's scarcely credible that you can have a major economic problem in California which does not feed to the rest of the 49 States.''

In my view, the amendments are also unnecessary. If utilities are able to avoid bankruptcy, then the power suppliers that these amendments seek to protect will be paid. Even if they go bankrupt, those power suppliers stand a reasonably good chance of being paid—if not by the utilities themselves, then by the government, for the reasons that Senator MURKOWSKI explained last night on the Senate floor.

In my view, the amendments are also unworkable. By trying to jump certain creditors to the head of the line to receive payment, they will most likely force the remaining creditors to move to put the utilities into bankruptcy immediately so that the utilities' assets can be divided immediately, 6 months before the amendments in fact take effect.

Even if the amendments are enacted, the generators would not likely receive any benefit from the enactment of the amendments.

Finally, these amendments, in my view, are uncharitable in that the administration has declared the California electric crisis to be California's problem, and has left it to California to solve the problem. The Federal Energy Regulatory Commission, which is the independent agency charged with seeing to it that electric rates are just and reasonable, has done little to help the situation. Governor Davis, and the State legislature in California, the utilities, and their creditors have been working valiantly in recent weeks, and even months, to fix this problem. All they are now asking of this Senate is that we not intervene and send the utilities into bankruptcy by adopting amendments of this type.

In my view, Senators need to weigh the potential enormous harm to millions of Americans that would result in the adoption of these amendments against the illusory benefit that the amendments hold out for the few generators that would be benefited.

In sum, to paraphrase Shakespeare, which is not done very often on the Senate floor, adoption of the amendments will rob California of that which cannot enrich the northwest generators and yet will make California poor, indeed.

I yield the floor. I 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 believe the unanimous consent order provided 5 minutes for Senator HAGEL to speak against the Wyden amendment. Senator HAGEL will not be able to be present, and I ask unanimous consent to use that time.

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

Mrs. FEINSTEIN. Thank you very much, Mr. President.

I thank the ranking member of the Energy Committee, the Senator from New Mexico, Mr. BINGAMAN, for his remarks in opposition to the Wyden amendment. I also wish to thank Senator MURKOWSKI, the chairman, who came to the floor last night and spoke against the amendment.

Last evening, I submitted for the RECORD several letters in opposition to the amendment from the Electric Power Supply Association, the Edison Electric Institute, The Williams Companies, Calpine, Pacific Gas and Electric, Southern California Edison, International Brotherhood of Electrical Workers, The Utility Reform Network, a consumer group, and the American Gas Association, all in strong opposition to the Wyden amendment, and also with one general theme. That general theme is that if the Congress of the United States were to determine the order in which debts would be discharged, it would trigger a bankruptcy because those who are not favored in that order would seek to protect their right by moving both Pacific Gas and Electric and Southern California Edison into bankruptcy. Virtually every single letter reiterated that concern.

I would like to reread from one of the letters so the Senate might understand the concern, and that is from the Electric Power Supply Association. That letter states:

> We are writing to express our deep concern and opposition to [the amendment]. Our fear is that this amendment could precipitate a financial crisis and exacerbate the already precarious situation in the West.

The PRESIDING OFFICER. Will the Senator suspend.

Mrs. FEINSTEIN. I will.

## BANKRUPTCY REFORM ACT OF 2001—Resumed

The PRESIDING OFFICER. We were to lay down the bill at 10:30. The hour of 10:30 having arrived, the clerk will report the pending bill.

The bill clerk read as follows:

> A bill (S. 420) to amend title 11, United States Code, and for other purposes.

Pending:

> Leahy amendment No. 20, to resolve an ambiguity relating to the definition of current monthly income.
>
> Wellstone amendment No. 35, to clarify the duties of a debtor who is the plan administrator of an employee benefit plan.
>
> Wellstone modified amendment No. 36, to disallow certain claims and prohibit coercive debt collection practices.
>
> Wellstone amendment No. 37, to provide that imports of semifinished steel slabs shall be considered to be articles like or directly competitive with taconite pellets for purposes of determining the eligibility of certain workers for trade adjustment assistance under the Trade Act of 1974.
>
> Kennedy amendment No. 38, to allow for reasonable medical expenses.
>
> Collins amendment No. 16, to provide family fishermen with the same kind of protections and terms as granted to family farmers under chapter 12 of the bankruptcy laws.
>
> Leahy amendment No. 41, to protect the identity of minor children in bankruptcy proceedings.
>
> Wyden amendment No. 78, to provide for the nondischargeability of debts arising from the exchange of electric energy.
>
> Carnahan amendment No. 40, to ensure additional expenses associated with home energy costs are included in the debtor's monthly expenses.
>
> Smith of Oregon amendment No. 95 (to amendment No. 78), of a perfecting nature.
>
> Reid (for Durbin) amendment No. 93, in the nature of a substitute.
>
> Reid (for Breaux) amendment No. 94, to provide for the reissuance of a rule relating to ergonomics.

AMENDMENT NO. 78

The PRESIDING OFFICER. The Senator now has 5 minutes.

Mrs. FEINSTEIN. I thank the Chair, and I would like to continue:

> This amendment seeks to give certain entities a favorable status in the event that California utilities fall into bankruptcy.

That is what the Wyden amendment does.

The letter goes on:

> Many companies have provided power to California's consumers and [this association] believes emphatically that all these entities deserve to be fully and fairly compensated.

As do I, Mr. President.

> However, it is inappropriate for the Senate to try and create winners and losers in this desperate situation. Rather than orderly resolution, this legislation could lead to a premature declaration of bankruptcy and the

inevitable liquidation of the California electric utilities' assets in a legal free-for-all.

The American Gas Association, on behalf of all of the natural gas companies involved in this, also states the same thing. They go on, however, to say:

As the preferred creditors would in actuality control the bankruptcy proceedings through their status, in effect Chapter 11 reorganization would not be an option. Liquidation of assets through Chapter 7 filing would result. Such action could cause serious disruption and harm to the utility customers, not to mention the non-preferred creditors.

So, Mr. President, you have virtually all of the electric power producers, as well as the natural gas producers, in effect, saying that if you give these Federal entities preferred status, should there be a bankruptcy, they would, in effect, have to assert their rights to force an involuntary bankruptcy, and that then would put both of the utilities into chapter 7 rather than chapters 11 or 13. This was the theme—the dominant theme—from virtually every generator, producer, and creditor.

I know of virtually no electric power producer or gas producer that believes this amendment will do anything other than trigger a bankruptcy of these two companies. Therefore, I am strongly in opposition to it.

Last evening, the proponent of this legislation, Senator WYDEN, said in fact the legislation does not do this. So we went out and we contacted the bankruptcy attorney for Pacific Gas and Electric. We asked them for a letter and their interpretation of the Wyden amendment. I have that letter. I will read it into the RECORD.

My firm is special reorganization counsel to Southern California Edison. In connection with the debate over the Wyden Amendment to S. 420, it has been suggested that the Amendment is not intended to prefer the debt covered by the Amendment over the debts of other creditors of Southern California Edison and the other utilities affected by the Amendment. Please be advised that, in my view, the Amendment would do exactly that.

This is the bankruptcy counsel for one of the utilities at risk of bankruptcy.

The letter goes on:

The purpose of the Wyden Amendment is to exclude from the binding effect of a plan of reorganization in chapter 11 certain creditors of the utility who provided wholesale electric power to the utility under certain conditions. It provides that such debts are nondischargeable. As a consequence, a utility in chapter 11 could not bind such preferred creditors under a plan of reorganization, and such creditors would be able to pursue the utility following confirmation of a plan to collect in full, in cash, their obligations while the other creditors were bound by the terms of a confirmed plan of reorganization. Depending upon the magnitude of such preferred claims, the utility might find it very difficult to confirm a plan under such circumstances. Such result would be very detrimental to not only the utility but to its other creditors.

This is the bankruptcy counsel himself.

It is also my understanding that there has been a suggestion in argument on behalf of the Amendment that the magnitude of the preferred obligations would not exceed $100 million to $200 million. I am advised by Southern California Edison that based upon the amount of power purchased during the emergency orders of the Federal Energy Regulatory Commission, the amount of power procured to serve Southern California Edison's customers substantially exceeded that amount.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to use the remainder of Senator BINGAMAN's time.

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

Mrs. FEINSTEIN. Thank you very much.

Continuing:

Based upon the foregoing, it should be clear that if Southern California Edison was involved in a bankruptcy proceeding, the proposed legislation would have significant impact upon Southern California Edison and its other creditors.

Mr. President, this is the bankruptcy counsel.

So we know two things: One, from bankruptcy counsel, that this amendment—the Wyden amendment and the Smith amendment—do in fact create two classes of creditors. And they do, in fact, give premier standing to one class of creditors, the Federal subsidized entities. Those entities are given preference in a bankruptcy. Secondly, we know in fact that the amount involved is a good deal more than the amount represented in this Chamber.

We also know that virtually every other power producer and supplier—every single one—believes that if this amendment were to pass, they would have to exercise their rights, which would be to push Southern California Edison and Pacific Gas and Electric into an involuntary bankruptcy and most probably in chapter 7, which would mean a dissolution of the companies involved.

This would be tragic because the State has negotiated an agreement with two utilities to buy their transmission lines and to put $7 billion into the purchase of those transmission lines. The result would then be a securitization of that back debt and enable these utilities to pay their debtors and creditors without going into bankruptcy. So a plan to enable the payment of the debtors and creditors is now underway by the State.

Various Members of this body may not like how the State is handling the problem, but the State does have the right to try to redress the debts and in fact is doing so. These amendments can only wreak devastation on that attempt. I strongly oppose the Wyden and Smith amendment.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I am going to a gathering for Jesse Brown. I ask unanimous consent that I be allowed to bring the Wellstone amendment, which is supposed to come next, to the floor at 1:15.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. Reserving the right to object, is that a modification of the earlier amendment?

Mr. WELLSTONE. That is correct.

Mr. SESSIONS. How would it be, again?

Mr. WELLSTONE. The modification is that the section dealing with coercive practices is out, which was a question of Banking Committee jurisdiction.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 40

The PRESIDING OFFICER. There will now be a 5-minute debate on the Carnahan amendment No. 40. Who yields time?

The Senator from Missouri.

Mrs. CARNAHAN. Mr. President, I understand the managers have agreed to accept my amendment on home energy. I thank Senator COLLINS, cosponsor of the amendment, as well as Senators HATCH, GRASSLEY, and LEAHY for their willingness to help on this very important amendment. I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment? The Senator from Alabama.

Mr. SESSIONS. I understand that pending is the Carnahan amendment. I ask unanimous consent that following the concluding debate, the amendment be agreed to and the motion to reconsider be laid upon the table.

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

Mr. SESSIONS. Therefore, the next vote will occur in relation to the Wyden-Smith amendment regarding the California utilities matter.

Mr. REID. 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. 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 yield back the time on the Carnahan amendment.

The PRESIDING OFFICER. The time is yielded back on the Carnahan amendment. By unanimous consent, the amendment is agreed to.

The amendment (No. 40) was agreed to.

Mr. SESSIONS. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be counted against either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. 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. 78

Mr. SESSIONS. Mr. President, I say to the Senator from Alaska that we are waiting on a 5-minute debate before we vote, and the debaters have not arrived. That could delay our vote. Will the Senator speak long?

Mr. MURKOWSKI. If I may, I will take some of the time, perhaps, allotted to the Senator from California to just make a statement on the amendment, which will not take more than a minute.

The PRESIDING OFFICER. The time has expired.

Mrs. FEINSTEIN. Mr. President, I don't believe the time has expired. I believe I have 2½ minutes. I will be happy to give some of that to the Senator from Alaska.

The PRESIDING OFFICER. The Senator is correct. She has 2½ minutes.

Mr. MURKOWSKI. I will just use a minute. Let me leave you with one thought. Article I, section 8, of the Constitution clearly states that Congress shall ''establish uniform laws on the subject of bankruptcies throughout the United States.''

There is absolutely nothing uniform about the pending amendment. It only protects electric sales ordered by the Federal Government to California, or sales only to California by State, local, or Federal Government entities. If similar power sales arose in New York or Georgia, these provisions would not apply.

In other words, this amendment says there is one set of bankruptcy rules for electric sales into California and another set of bankruptcy rules for electric sales into the other 49 States. Clearly, this is completely contrary to the intent of our Founding Fathers and the Constitution; they wanted one set of uniform rules to govern bankruptcy throughout the entire country. As a consequence, I urge my colleagues to reflect on this legitimate question of the constitutionality of the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, there are 2½ minutes on our side for the Smith-Boxer-Wyden amendment. I yield a minute and a half of that time to Senator BOXER, and I thank her. I remind our colleagues on this issue affecting the Pacific Northwest, there is a disagreement among the Californians.

Mrs. BOXER. Mr. President, I am supporting the Wyden-Smith amendment because it sends the right signal—an ethical signal to the private utilities in California who owe billions of dollars of unpaid bills to those who supplied energy to my State when my State was in dire need. Sometimes these power generators, many municipal utilities, were forced by the Federal Government to send this power, even though they were concerned that they needed to conserve it for themselves or that they might not get paid.

Call me old-fashioned, but I say pay your bills. Don't send your parent company $4.8 billion—which is what one private utility did—to pay dividends of the shareholders and repurchase stock when you know you have bills to pay.

I have a Washington Post article. I ask unanimous consent to have it printed in the RECORD.

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

[From the Washington Post, Jan. 31, 2001]

AUDIT RESULTS ANGER CONSUMER GROUPS

(By William Booth and Rene Sanchez)

LOS ANGELES, Jan. 30—The first of several audits to be released by state regulators said that one of California's two nearly bankrupt utilities, Southern California Edison, legally passed along nearly $5 billion in net income to its parent, Edison International, which used the money to pay dividends to its shareholders and to repurchase its own stock.

The audit, released Monday night by the California Public Utilities Commission, also showed that Southern California Edison is now broke and so strapped for cash it cannot keep buying electricity at rates higher than it can pass along to consumers.

The $4.8 billion was, in part, proceeds from the sale of the Southern California Edison's power plants, which the utility was required to sell under California's 1996 deregulation plan. Deregulation here sought to break up the utility monopolies and open the state up to free-market forces.

Consumer advocates—and some elected officials—reacted angrily to the audit, accusing the utilities of pleading poverty and begging for financial assistance from the state to avoid bankruptcy.

''Basically, they took the money and ran,'' John Burton, a Democratic leader of the state Senate from San Francisco, told reporters. ''Had they not done that they would not be in the financial problem they are in. If ratepayers bail them out, ratepayers should get something in return, like power lines or something.''

But officials with the utilities said their critics are playing politics and misinterpreting their books. Tom Higgins, senior vice president at Edison International, said: ''There's been no profit, no windfall. This is the recovery of capital investment.''

The past profits and current solvency of the state's two struggling utilities are central to California's energy crisis. Most experts agree that the state is suffering from soaring prices and its 15th day of emergency energy rationing because of a failed and dysfunctional deregulatory plan, which allowed wholesale energy prices to soar while capping the rates utility companies could charge consumers. In the past six months, the utilities have gone bust, while wholesale power producers have reaped huge profits.

California is fast running out of time to solve its immediate energy crisis. The state already has used up the first $400 million in emergency appropriations for electricity purchases. The Legislature is considering bills to make the state a major buyer of power—and to pass along possible steep increases in costs to consumers. Gov. Gray Davis (D) worked through the weekend trying to hammer out a longer-range plan, but so far the Legislature has passed only emergency measures and decrees—and no long-term solutions.

Higgins, the Edison International executive, said Southern California Edison was required to sell off its plants after deregulation in 1996, and that it did so—mostly to out-of-state companies that are now the wholesale suppliers of California's electricity. The utility sold off its gas and coal-fired plants, but retained its nuclear and hydroelectric facilities.

The money they got from plant sales, Higgins said, went to pay off the banks that loaned them the cash to build the generating stations and to repay investors and shareholders who also put money into plant construction. The transfer of money occurred from 1996 through last November.

''It's like you have a house and mortgage and you sell the house and you recover your initial investment and then pay off the mortgage,'' Higgins said.

Another audit of Pacific Gas and Electric Co., the other struggling utility, will be released within days. That results are expected to be similar.

''The only reason this would be controversial is that the consumer groups are trying to rewrite history,'' said John Nelson, a spokesman for PG&E.

Nelson said his utility did the same thing as Southern California Edison—it sold plants, paid off loans and sent the rest to its holding company, PG&E Corp. He would not disclose exactly how much was transferred, but said it is safe to assume a figure of several billion dollars.

Consumer advocates around California, however, said it did not matter that the utilities were returning investments to their shareholders, a practice that no one has asserted is financially improper or illegal. Today, they began lobbying state lawmakers to scrap an emerging legislative plan that would cover much of the utilities' purported debts with billions of dollars in publicly financed bonds.

''This confirms what we've been saying all along,'' said Matt Freedman, a director of the Utility Reform Network. ''Edison is not being straight with the public or the Legislature about the extent of its debt.''

Freedman also said that the audit shows that in recent months Edison has been selling some of its own generating power back to itself at high prices on the open market, then claiming both profit and debt.

''It's like a laundering scheme,'' he said.

Michael Shames of the Utility Consumers Action Network said the audit could significantly influence the fast-moving legislative debate on the state's energy crisis. He said that while it was not illegal for the utilities to transfer money to their parent companies, ''the question is, 'Was it prudent?' ''

But Paul Hefner, a spokesman for Assembly Speaker Robert Hertzberg (D), said there are no substantive new revelations in the Edison audit and that the Legislature is proceeding with a plan outlined last Friday that would cover much of the utilities' debts in exchange for the state receiving warrants to buy stock in the companies.

''I don't know that it changes the landscape at all,'' Hefner said, referring to the audits. ''All along we've been saying we're not going to do this and get nothing back. We're driving as hard a bargain as we can.''

Mrs. BOXER. Another private utility did the same thing to the tune of $5 billion. That is $9 billion these private utilities sent out.

In my opinion, this amendment sends a strong message to the utilities in my State: It is not right to ask for help and walk away from your obligations. This amendment helps 12 power companies in California, municipal companies. In the end, it will help consumers because the next time there is a crisis,

power companies will not fear they will be left high and dry and they will be willing to assist us in the future.

This amendment was not offered in anger; it was offered in fairness. I support it.

I yield back the remainder of my time.

The PRESIDING OFFICER. There are 37 seconds remaining.

Mr. WYDEN. To finish the debate, I yield to Senator SMITH, my colleague.

Mr. SMITH of Oregon. Mr. President, I appreciate the chance to say a few closing words on this debate, which has been a good one.

All the neighbors of California are asking—at least those affected by the Bonneville Power Administration—is that they be paid. I believe California wants to pay. Ultimately, they have to work through their law that makes it difficult to pay. We want them to do that. We need them to do that because people in the Northwest already are paying higher rates because of this California law. We should not have to pay additional, higher rates.

I thank the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, how much of my time remains?

The PRESIDING OFFICER. One minute 4 seconds.

Mrs. FEINSTEIN. Mr. President, I rise to thank Senators MURKOWSKI and BINGAMAN for opposing this amendment and also to join them in saying that I believe this is a very dangerous amendment. It creates two classes of creditors. The first is a protected class; namely, certain Federal entities.

Yesterday, I introduced into the RECORD a series of letters from virtually all of the electricity and natural gas providers. Those letters had one common theme, and that theme was that to do this is not only unprecedented, but it will probably force an involuntary bankruptcy because once the dam is broken, other creditors will then seek to protect their rights under bankruptcy law. Hence, it is a very dangerous amendment.

The State of California is currently seeking to purchase the transmission lines of the utilities to be able to inject $7 billion and solve the problem. I urge a ''no'' vote on this amendment.

Is all time expired?

The PRESIDING OFFICER. Yes, it is.

Mrs. FEINSTEIN. Mr. President, I move to table the Wyden amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table Amendment No. 78.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. REID. I announce that the Senator from New Jersey (Mr. CORZINE) and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

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

The result was announced—yeas 67, nays 30, as follows:

[Rollcall Vote No. 26 Leg.]

YEAS—67

| | | |
|---|---|---|
| Akaka | Feingold | McConnell |
| Allard | Feinstein | Mikulski |
| Allen | Frist | Murkowski |
| Bayh | Graham | Nelson (NE) |
| Bingaman | Gramm | Nickles |
| Bond | Grassley | Reed |
| Breaux | Gregg | Reid |
| Brownback | Hagel | Rockefeller |
| Bunning | Hatch | Sarbanes |
| Carper | Helms | Schumer |
| Chafee | Hutchinson | Sessions |
| Clinton | Hutchison | Shelby |
| Cochran | Inhofe | Smith (NH) |
| Collins | Jeffords | Snowe |
| Conrad | Johnson | Specter |
| Daschle | Kerry | Stevens |
| DeWine | Kohl | Thomas |
| Dodd | Landrieu | Thompson |
| Domenici | Leahy | Thurmond |
| Dorgan | Lieberman | Voinovich |
| Edwards | Lincoln | Warner |
| Ensign | Lott | |
| Enzi | Lugar | |

NAYS—30

| | | |
|---|---|---|
| Baucus | Craig | McCain |
| Bennett | Crapo | Miller |
| Biden | Dayton | Murray |
| Boxer | Durbin | Nelson (FL) |
| Burns | Harkin | Roberts |
| Byrd | Hollings | Santorum |
| Campbell | Inouye | Smith (OR) |
| Cantwell | Kennedy | Stabenow |
| Carnahan | Kyl | Wellstone |
| Cleland | Levin | Wyden |

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—2

Corzine Torricelli

The motion was agreed to.

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

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

The legislative clerk proceeded to call the roll.

Mr. NICKLES. 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. NICKLES. Mr. President, Senator BREAUX, Senator ENZI, and myself had an interesting and, I think, enlightening discussion on the issue of ergonomics, as well as Senator SPECTER.

I ask unanimous consent there now be a period of about 30 minutes for a discussion of this issue, the time to be equally divided between Senators BREAUX and ENZI for debate only.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, does the Senator have an idea how long this will take?

Mr. NICKLES. About 30 minutes.

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

The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, I thank my colleagues for the discussion with me—Senator ENZI, Senator LANDRIEU, and Senator BLANCHE LINCOLN—on the issue of an amendment I have at the desk, which we will not vote on right now, but I hope to perhaps reach an agreement on at a later hour.

The amendment addresses the question of the so-called ergonomics rule, which this body addressed last week, through the use of a procedure which is not normally utilized, when the Senate of the United States said that a rule that had been promulgated by the Department of Labor would not be allowed to go into effect addressing injuries in the workplace that workers receive which cause them to lose very valuable hours of service, both to themselves and their employers. Those workplace injuries clearly cause a loss to companies and small businesses, as well as the personal loss that is caused to the individual.

There was a great deal of concern raised by myself and by some Republican colleagues to the rule because in many cases it would have an adverse effect on the States' workers compensation laws. And they had concerns about the potential that the rule would, in fact, allow injuries to be covered that were not directly related to having been brought about by conditions in the workplace.

The third thing I heard a great deal of was that employers really didn't have enough information to know whether they were covered or what were their responsibilities. Therefore, in order to try to answer those questions and still address the concern that I think most people have about injuries in the workplace, which are estimated to cost between $45 million and $54 million annually, I have offered an amendment that I think is one this body should embrace in a bipartisan fashion.

No. 1, we say the Secretary of Labor, within the next 2 years, shall promulgate regulations dealing with these injuries in the workplace. In addition to giving her the mandate from the Congress to promulgate these regulations, we also go further and say that, in trying to address the concerns we heard on the floor of the Senate, for instance, in issuing this new rule, the Secretary of Labor shall ensure that nothing in the rule expands the application of the State workers comp law. We had a lot of concern about whether it would be altered or expanded. This amendment clearly says that nothing would be in the bill and the rule could expand the application of the State workers compensation law. It also says that nothing in this amendment or in the rule could affect the OSHA laws. They are in place as they are, and if somebody wants to change them, that would be for a later date.

The other thing I think was very important, which we heard from so many of our people, was that the injuries they are talking about under the rule shall be work-related disorders that occur within the workplace. Many people were concerned that, well, someone could injure their back on a Saturday at home during a recreational activity and come to work on Monday and blame it on conditions in the workplace.

The amendment I have offered, along with my bipartisan cosponsors, says

the standard shall not apply to nonwork-related disorders that occur outside the workplace or nonwork-related disorders that are aggravated by the workplace.

So every objection I heard, particularly from my colleagues on this side of the aisle, I think has been taken care of in the amendment we have offered. It is my intent that if this rule would be promulgated, nothing in this amendment would prohibit Congress from using the same Congressional Review Act procedures if they did not like the rule. If some think it is too much or too little, they can still use the Congressional Review Act, as we did last week to knock down the rule with which a majority of the Members of the Congress did not agree.

I think our amendment addresses every concern. The question is, Do you want to do something about the workplace that is fair, reasonable, responsible; that businesses can embrace, working people can embrace, and say, all right, this is a problem, let's recognize it and do something about it? Just to say, well, the Secretary may not do that, really doesn't give any guidance to what the Congress says. We should make the rules.

My amendment takes care of every objection I heard, I think, and I think there is a proper balance between employers and business, as well as the working men and women of this country. I do not, for the life of me, understand why this would not be something that should not be unanimously agreed to by Republicans as well as my Democrat colleagues.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. BREAUX. I guess we are equally divided under the agreement.

The PRESIDING OFFICER. Correct.

Mr. BREAUX. I will yield 15 minutes to my colleague. I reserve 15 minutes.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I thank Senator BREAUX for his efforts on ergonomics. These injuries are happening in this country and we need to do something about them. I appreciated the conciseness with which he made a statement during the last debate we had on ergonomics.

I wish his bill more closely followed the statement he made. I suspect there is leeway in there to do exactly what he said when he made that statement, and I think this comes fairly close. I hope we will be able to work together to make some changes in what is in his amendment. Most of all, what I hope is that the Senators who are interested in this issue will work with me. I am the subcommittee chairman for Employment, Safety and Training. It is all of the labor issues. It includes the ergonomics issue. I had planned to begin a process of holding some hearings. I already have my staff members looking at past efforts—and there are supposed to be 10 or 12 years of efforts on ergonomics already—to see what was done and where it went wrong before. Also, I am scheduling some meetings with Secretary Chao. I am pleased to have other people involved in those meetings with me. We need to come up with a mechanism that will actually prevent injuries. I am not interested in the mechanism that just does paperwork or just puts costs on business. I know the people who submitted this amendment—particularly Senator BREAUX—are not interested in having that either.

I have been trying to work on this compliance issue through a number of mechanisms since I got here. One of them is something called the SAFE Act. It was encouragement for businesses—particularly small businesses—to hire professional consultants to come in and take a look at their business. I would suggest using OSHA people, but they are already overworked doing OSHA inspections. In State plan States, which are the States where there are the least OSHA accidents, there are more inspections but there is more consultation that is done. So I have put a huge emphasis on consultation with businesses.

The way the consultation works in States is the OSHA team, or inspector, comes in and looks at the place and says this is wrong, this is wrong, and this is wrong. If they say that, you better fix it. And if you fix it, then you are not subject to the penalties.

That is an incentive process. That is what I envision for compliance with an ergonomics rule as well: Somebody helping the small businessman. I am not worried about the big businesspeople because they have the VPP program, the specialists, and they have the professionals on staff. It is the little guy, and that is what we talked about when we did the ergonomics CRA last week. They cannot digest all the information. They do not even know what is absolutely essential and what is suggested.

If somebody can tell them what to do—they know the value of their employees; they want to protect their employees. In most instances, they do not know how to protect their employees. If there is more of the consultation aspect to it and the incentive to do it, if the folks come in and tell you to do those things and you do those things, you will not be fined. I am so pleased there is a compliance piece to this.

Something I hope will be incorporated in the future, perhaps even in this rule, is the ability of the managers to talk to the employee or employees directly. The way the current national labor standards read is that management cannot talk to the employees unless they are in a union. Of course, if they are in a union, then the management can talk to the representative of the employees.

We are missing this step of being able to say to an employee: How are you feeling? How is your workstation? Are there any improvements we can make? These are folks who are doing that same job in all of the examples we use, the same job day in and day out. They are the experts on it. They know the things that can be done to make their work easier.

Those are the things that need to be incorporated in ergonomics: very specific suggestions for a particular kind of a—it is not even for a particular kind of business because within an industry, several different businesses will do the same operation differently. If they conferred more, which I am not sure they are allowed to do either, then they would probably wind up with a standard method of doing things, and they would be able to compare the ergonomics process, as well as any other safety issue and come to an agreement on how those safety issues can be reached.

Another thing that needs to be done while we are at it is changing the rulemaking process. One of the things that fascinated me in my comments and visits with Assistant Secretary Jeffress, who is in charge of OSHA, was that in the 28 years OSHA has been in effect, there has not been one rule revised even though there have been huge changes in the workplace.

What that tells me is that our rulemaking process is so cumbersome, so subject to court action that we cannot take a look at things that were done 28 years ago even though the technologies have changed tremendously.

There are some things that need to be done. I wish we had been consulted a bit more on some of the specific wording. I know there is an effort to work together on some of these things, so we may be able to come up with an agreement in a short while so this amendment can be accepted.

I thank the Senator from Louisiana for making this effort, for getting us started on it. I hope he will work with me on the process. I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I will use whatever time I need, and I will then yield to the Senator from Arkansas.

Some of the points the Senator made are valid. However, our amendment addresses those concerns, particularly the concern about an employer knowing exactly what his or her requirements are because we say that the rule shall set forth in clear terms the circumstances under which an employer is required to take action, the measures required of an employer under the standard, and the compliance obligation of an employer under the standard.

We give the employers clear direction. We let them know when they are in compliance, and we clearly spell out what their obligations are and also the measures that are required.

Under the requirements of our legislation, the rule has to come back and clarify to an employer exactly what is being required.

I think the amendment is a good one; ergo, I think it should be adopted.

I yield whatever time she consumes to the Senator from Arkansas, Mrs. LINCOLN.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. I thank the Chair.

Mr. President, with all of this talk we have heard recently about bipartisanship and wanting to do what is right by everyone, not leaving anyone behind, I am certainly glad we have at least a few minutes to have a debate on an alternative to last week's issue of workplace safety.

I have been delighted to work with my colleagues, Senator BREAUX and Senator LANDRIEU—and Senator SPECTER has worked with us—in developing an amendment that requires the Department of Labor to draft a new ergonomics standard that addresses the ergonomic hazards in the workplace without penalizing business owners who act in good faith.

As I stated in my remarks last week, I voted to repeal the ergonomics standard last year because, in my opinion, it was unreasonable in terms of the requirements it imposed on businesses and how unworkable it was with regard to the vagueness of the standards with which employers were expected to comply.

However, I do not believe our action to overturn the current ergonomics rule should in any way be interpreted as congressional intention to end the debate on this issue of workplace safety. That is what we did last week. That certainly was not my intention. In fact, I believe the Federal Government does have a responsibility to set safety standards and to protect workers against hazards that exist in their place of employment.

Certainly, the new Secretary of Labor and the new administration, through working with our colleagues in hearings and other ways, I think would relish the idea of being able to come up with a standard that is workable, something that can give us workplace safety but encourage businesses to be involved. That is certainly possible.

The ergonomics standard or the rule we saw last year was a no win for anyone because we were not going to see, because of the court cases that were already involved with that rule, workers protected, nor were we able to see a reasonable compliance that industries could meet. It was not a win for anyone.

If we fail to come back with anything else, and if we fail to encourage the Department of Labor to come up with something that is reasonable and workable, then we, once again, have failed everyone—businesses and employees—because we can do better at providing better workplace safety, and we can also provide businesses a better way of complying with it. Everyone wins with that—workers and businesses.

The amendment we are offering gives the Department of Labor 2 years to craft a new Federal ergonomics standard. In addition, our amendment directs the Department to address serious problems that exist in the previous rule.

Specifically, we make clear that the new standards should not apply to injuries that occur outside the workplace or, as Senator BREAUX mentioned, injuries that are aggravated by activities that employees perform as a part of their job.

Furthermore, this amendment requires the Secretary of Labor to set forth in clear terms what businesses are required to do to comply with this new standard before it takes effect.

Finally, we prohibit the new rule from expanding the application of State workers compensation laws.

In short, I believe our amendment is a reasonable, commonsense approach that will allow the Department of Labor to address a serious health and safety issue in the workplace in a manner that is fair to both employees and employers. After all, in the debate last week, is that not what we said we were striving for?

As a founding member of the Senate's new Democrats coalition who is inclined to seek compromise whenever possible, I wish we had been given the opportunity to draft and offer a compromise proposal on ergonomics last week when it was most appropriate. Unfortunately, we did not have that opportunity.

Now that the consideration of the resolution of disapproval has been concluded, I am certainly hopeful my colleagues will want to work in a bipartisan way and permit a reasonable period of debate and vote on this amendment and come up with something that is going to be workable for absolutely everybody, certainly employees as well as employers and businesses, all of which can be brought to the table in the next 2 years, and we can craft something that is going to be workable and meet the objectives we have all expressed.

I thank the Senator from Louisiana for his hard work and leadership in this effort, and I look forward to working with all of our colleagues in the next several days to come up with something we can adopt and prove to the people of this Nation and businesses of this Nation that we are truly concerned about workplace safety and about being sensible.

I yield back to the Senator from Louisiana the remainder of his time.

Mr. BREAUX. I thank the Senator from Arkansas for her contribution. She comes from a State deeply involved in these issues. I know she speaks with a ''mine'' of experience in addressing these concerns. I thank her for her contribution, as well as my colleague from Louisiana, Senator LANDRIEU.

I take this time to say to our colleagues our staffs are currently talking with each other across party lines to see whether there might be some agreement we can reach on an authorization bill as an amendment either to this legislation that is currently pending before the Senate or to some other legislative package that is going to come before the Senate. I will continue to work with our colleagues and our staffs trying to find a way to reach an agreement on a pending amendment.

I yield the floor.

Mr. ENZI. I thank the Senator from Arkansas and the Senator from Louisiana for their consideration and their work in a bipartisan way to see we get something done and to extend that opportunity to go to meetings with Secretary Chao and also to participate in hearings on my subcommittee. We want to make some progress on this issue.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. REID. Mr. President, I know Senator ENZI is not managing the bill—he is on the floor for other reasons—but I wonder if we could have some idea in the near future as to what we are going to do for the rest of the day. Senator WELLSTONE, by virtue of the unanimous consent agreement, is going to come in at 1:15. We have Senator DURBIN who has offered what is, in effect, a substitute. That was laid down last night. He is willing to start debating that amendment.

We have others we could get over here to offer amendments. We want the record to be clear that we are doing everything we can. Senator LEAHY has instructed everyone to move this bill along as quickly as possible. I certainly agree with that. I see Senator GRASSLEY, too. Maybe we could have some information as to whether we could set aside the amendment that is pending and move on to something else?

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, it is my understanding the bill managers are looking at what is left on the bankruptcy bill at this moment. Senator WELLSTONE's bill will be the amendment pending. He is planning on being here at 1:15.

I had heard some concern that most of the actual bankruptcy issues had been covered and we were just doing some peripheral ones. There is some concern on our side as to what the process is going to be, too. It is my understanding they are discussing that now. The chairman probably can give us some information.

Mr. GRASSLEY. If the Senator from Nevada will yield, I will try to respond to his inquiry.

No. 1, since so many people are busy during the lunch hour with the steering committees and the type meeting

that both parties have, we might not be so fortunate as to get something up before 1:15 when the Wellstone amendment is up.

The second is, the Senator asked if we could do another amendment. What amendment would the Senator suggest we move to, then?

Mr. REID. There is one amendment about which I have received a number of calls today. Mr. DURBIN, the Senator from Illinois, wants to offer his substitute. In effect, that is what it is. The Senator from Iowa is familiar with that. It is at the desk.

It is at the desk. He would be willing to have a relatively short time agreement for the opportunity to express his views on that.

Mr. GRASSLEY. As the main sponsor of this legislation, I should be able to tell you we could go to the Durbin amendment. But we have some reservation at this time on moving forward on the Durbin amendment, particularly because it would take a good deal of time and would interfere with the Wellstone amendment. If there is some other amendment the Senator from Nevada would like to take up, he might suggest something, and we would quickly consider that.

Mr. REID. We have one that Senator LEAHY has been trying to get up, amendment No. 19, a set-aside amendment.

Mr. GRASSLEY. That is the same amendment, if we went back to regular order. If we called regular order, we would end up on that amendment.

Mr. REID. It is my understanding that No. 20 is regular order. This one isn't before the Senate.

Mr. GRASSLEY. This is an amendment that has not been before the Senate.

Mr. REID. That is my understanding. It has been filed but it has not been debated.

Mr. GRASSLEY. I suggest we put in a quorum call, and then we will take a look at it.

Mr. REID. 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. 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, I ask that the pending amendment be set aside temporarily and amendment No. 19 on behalf of Senator LEAHY be offered.

It is my understanding that the Senator from Iowa will also want a unanimous consent agreement to indicate there would be no second-degree amendments.

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

AMENDMENT NO. 19

Mr. REID. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LEAHY, proposes an amendment numbered 19.

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

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

The amendment is as follows:

(Purpose: To correct the treatment of certain spousal income for purposes of means testing)

On page 17, line 8, strike ''and the debtor's spouse combined'' and insert '', or in a joint case, the debtor and the debtor's spouse''.

Mr. REID. 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.

## MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators speaking up to 10 minutes each until 1:15 today.

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

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

## BANKRUPTCY REFORM ACT OF 2001—Continued

AMENDMENT NO. 36, AS MODIFIED

The PRESIDING OFFICER. The clerk will report the pending amendment of the Senator from Minnesota.

The legislative clerk read as follows:

Amendment No. 36, as modified, previously proposed by Mr. WELLSTONE.

Mr. WELLSTONE. Mr. President, I want to be clear with my colleagues and the majority leader that I came to the floor very early on with several amendments to move this process forward. Last week, when I initially objected to a motion to proceed, the majority leader said we would have substantive debate on amendments. This amendment has been ''hanging out there'' for several days. I have wanted a vote on this amendment. I modified this amendment because there was concern on the part of one of my colleagues on the other side that there was a jurisdictional problem with a committee. I had assumed we would have an up-or-down vote on this amendment. My understanding is that it might not happen and there might be a second-degree amendment. I don't know what that amendment is, but it will probably be an amendment that will gut this amendment.

It makes me start to wonder, even more, about what we have been doing out on the floor of the Senate with this bankruptcy bill. My colleague called this a reform bill, but I wish to mention a couple of articles that have been published recently. I will soon ask to have them printed in the RECORD.

There was a piece that appeared on Tuesday, March 13, in the Wall Street Journal entitled, ''Auto Firms See Profit In Bankruptcy-Reform Bill Provision.'' The first paragraph:

The nation's three major auto makers are always interested in making deals, and they hope to close one in the U.S. Senate this week that is worth millions of dollars to each of them.

The deal lies in the bankruptcy-reform bill expected to clear the Senate this week. Buried in the bill's 42 pages is a section that changes the way auto loans are treated when an individual declares bankruptcy, making it more likely the car loans will have to be paid back in full—even while other creditors collect only part of what they are owed.

That might include child support payments as well.

There also is in here a chart that deals with the soft money, PAC, and individual contributions by members of the Coalition for Responsible Bankruptcy Laws.

I actually think the bitter irony is that the debate we have been having on this bill—for the 2½ or 3 years I have been working on this—is probably, unfortunately, a perfect bridge to the debate we are going to have on campaign finance reform.

Again, I want to be real clear with my colleagues. I don't like to come to the floor and do a one-to-one correlation that money has been given, so that is why you are voting this way. I don't believe in that for several reasons. One, it would be arrogant on my part to believe that if somebody has a different point of view, that means, ipso facto, they are receiving all this money from, for instance, the financial services industry and that is why they are voting the way they are. That is not my argument.

Rather, my argument is institutional, which is more serious. The problem with this political process is not that there is ''corruption,'' as in the wrongdoing of individual officeholders, as in one-to-one quid pro quo—here is the money, here is how you should vote.

The problem is institutional, and that is a more serious problem. It is the imbalance of power, the imbalance of access, the imbalance of influence, not affluence, between the people I have tried to represent as a Senator—low- and moderate-income people, people of color, poor people, consumers—and the heavy hitters, the investors, the players, the lobbying coalition.