

2080. The deconstruction of the guaranteed benefit leads us further away from the real security this program provides, and this country needs to know that even though Republicans do not like to campaign on it, their plans would end the guaranteed benefit Social Security provides today.

A few weeks ago, I joined several of my female colleagues on the Senate floor to speak about how the President's plan would impact women. Unfortunately, this is not a new battle. For years, we have fought to ensure that women and minorities receive a fair shake in Social Security reform discussions. The promise of Social Security is especially important to women. Why? Because women face unique challenges when they retire. We know women make less money throughout their lifetimes, so we know when they retire they have fewer dollars to live on. Women also leave the workforce to raise their families. That is a value that we all support and endorse and want women to be able to do, but that means they have less money when they retire. Finally, women live longer. That is a fact. And they are more likely to suffer from a chronic health condition. So they, in particular, rely on the security of Social Security. With those special challenges women face, we know today Social Security keeps a lot of older women out of poverty. The benefit formulas of Social Security are tilted to give a greater rate of return for lower wage workers such as women and minorities.

Unfortunately, time and time again, we have found that these proposals will impoverish women and slash their benefits. The new plan that has been offered in the Senate is no exception. That plan will cut benefits based on a new life-expectancy requirement. The Senate Republican plan says:

By factoring increased life expectancy into the base benefit calculation, the rate of increase in benefit payments will be slowed.

Addressing the long-term solvency of Social Security is a laudable goal, but trying to balance the books by slashing benefits for women is absolutely unacceptable. This plan would dismantle the progressive nature of Social Security benefits, leaving women with less money over a longer period of time. So if one is a woman who retires at 62 or 65 and lives to be 95, under these plans they will not be able to make it. Their Social Security benefits will be reduced, and they will not be able to live off what they retired on 30 years prior to that.

It makes no sense to reduce women's benefits. They are already limited by their lower income, and cutting them again simply because they live longer is just wrong. In fact, we should be doing all we can to ensure progressive benefits for low wage earners that are targeted to those least likely to have other retirement savings. All too often, as we know, that means women.

I know I am not going to stand for this attack on women, and I know

many of my colleagues are going to stand right alongside me in this fight.

Finally, there is another important issue I will talk about today that no one on the other side of the aisle or the other side of Pennsylvania Avenue cares to talk about, and that is these Social Security plans will add trillions of dollars to an already massive Federal debt, a debt that we are just handing over to the generation coming behind us.

In traveling the country to sell his privatization plan, President Bush has been saying we have an obligation and a duty to confront problems and not pass them on to future generations. Well, many of us on both sides of the aisle agree with him. We should not create new problems for the next generation to handle. The trouble is, the President's plan actually adds to the problems of the next generation. It does nothing to solve them.

This new Republican plan, just like President Bush's, would add trillions of dollars in debt to our country's financial sheets in the next two decades alone. In fact, the Center on Budget and Policy Priorities said that the privatization proposal will create nearly \$5 trillion in new debt over the next 20 years. That money is going to have to come from somewhere, and it is naive to think that huge new borrowing will not affect current retirees. It is also naive to think that massive new borrowing will not affect programs such as Medicare and Medicaid that really do need our attention. It is naive to think we will simply go along and pass on these massive new problems to our children and our grandchildren.

So once again we are left to consider privatization plans that run up massive new debt on the country's credit card while pulling money away from the Social Security system and ending the bedrock of the program—the guaranteed benefit. That is a recipe for disaster.

The President and his friends in the Senate are fixated on private accounts, even though they will do absolutely nothing to address the long-term solvency of the Social Security program.

Last week, I joined with 41 of my colleagues to ask President Bush to take this risky scheme off the table before moving forward with any Social Security reform. The letter said, in part, funding privatized accounts with Social Security dollars would not only make the program's long-term problems worse, but many believe it represents a first step towards undermining the program's fundamental goals. Therefore, so long as this proposal is on the table, we believe it will be impossible to establish the kind of cooperative bipartisan process we need to truly address the challenges facing the program many decades in the future.

We will not stand for the President's plan for social insecurity. We will continue to stand for future generations against a private solution that simply

adds trillions of dollars in debt to future generations. We want to be proud of what we pass along to our children and grandchildren.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, I do not know if it is appropriate at this time to ask that we return to S. 256, the pending business of the Senate.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The assistant legislative clerk read as follows:

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

Pending:

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

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

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

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

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

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

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

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

Dodd (for Kennedy) amendment No. 69, to amend the definition of current monthly income.

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

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

Dodd (for Kennedy) amendment No. 71, to strike the provision relating to the presumption of luxury goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Boxer amendment No. 62, to provide for the potential disallowance of certain claims.

The PRESIDING OFFICER. Under the previous order there will be 10 minutes of debate equally divided on each of the following amendments: amendment No. 110, Amendment No. 66, amendment No. 62, and amendment No. 67.

Mr. DURBIN. Mr. President, if you will please notify me when I have 1 minute remaining of my 5 minutes allocated, I would appreciate it.

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mr. DURBIN. The argument behind this bankruptcy reform bill is it is not going to affect people in lower income categories. Senators on the other side of the aisle have come to the floor and

said: Don't worry about this bill. Yes, it is stricter, you have to file more documents, it will cost more in legal fees, but if your income is lower than the median income and you file for bankruptcy, it does not affect you. You are exempt from it.

Senator after Senator has come to the floor and said that. I even asked Senator SESSIONS of Alabama on the floor yesterday: Is that your understanding, that if you are below median income you do not have to file all the papers for the means test? You don't have to go through some of the most harsh provisions of the bankruptcy bill? And he said yes, that was his understanding.

My amendment is very simple. It clarifies what has been said over and over again, that the means test does not apply to debtors who go into bankruptcy court whose incomes fall below the median level. It adds only two sentences to the bill. It makes it clear that those lower income debtors only have to show the court, first, the documentation already required under chapter 7, and then their monthly income. Once they show the monthly income, if it is below the median income in that area, they are exempt from the means test. That is all my amendment says.

Frankly, if colleagues on the other side of the aisle will not accept this amendment, I have to wonder whether they really believe this bill exempts lower income people. If it does not, it means everybody walking into bankruptcy court, not just those who can repay but many who have much lower salaries and incomes and cannot, is going to have to go through all of the procedural hooks and ladders set up by this S. 256. I don't think that is reasonable. It certainly is not the way this bill has been explained for the last 2 weeks. It is important that we read and recount what Senator HATCH said on February 28:

Let me tell you at the outset, the poor are not affected by the means test. The legislation provides a safe harbor for those who fall below median income.

The Republican leader came to the floor, and here is what he said:

This bankruptcy reform act exempts anyone who earns less than the median income in their State.

Those are the words of Senator FRIST.

Senator SESSIONS:

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

If this is true, and I hope it is, there is no reason this amendment should not pass overwhelmingly, in fact by a voice vote. But if those who drew up this bill really want to put everybody through these means tests regardless of their income, even those in the lowest income categories, that is another story altogether.

We know that half the people who go to bankruptcy court today are there

because of medical bills. They are people who ended up with a mountain of debt because of an illness in their family. Do you know what else? Three-fourths of those people filing for bankruptcy because of medical bills had health insurance. They thought they had protected themselves and their families. They didn't have enough health insurance or they lost their job after the diagnosis. It happens.

What we are saying is if you are in one of those terrible situations where things have gone terribly wrong for your family and you are facing bankruptcy and you are in a low-income category, for goodness' sakes, why would we heap more procedural requirements, more cost, more paperwork, more demands on the poorest among us?

This amendment says what three Republican Senators have said on the floor word for word: If you are below the median income, you do not have to fill out the papers for the means test. I hope my colleagues, those who came to the floor and said this over and over again, agree to this amendment.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. DURBIN. Thank you for notifying me of that.

We are going to have several amendments this morning. Each one of these amendments tries to clarify this bill. This bill is being driven by the credit card and banking industry, you know, the same people who fill your mailbox with credit card applications you never asked for, the same people who show up at the Big Ten football game trying to peddle their credit cards to students—the same people are pushing this bill. They want folks to get deep in debt and if they file for bankruptcy never get out from under the debt—keep paying it for a lifetime: a literal debtors' prison.

If we truly want to exempt the lowest income Americans from the worst provisions and toughest provisions of this bill, I encourage all of my colleagues to support amendment No. 110.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa is recognized.

AMENDMENT NO. 66

Mr. HARKIN. Mr. President, I call up amendment No. 66 on behalf of myself, Senators ROCKEFELLER, LEAHY, DAYTON, and KENNEDY.

The PRESIDING OFFICER. The amendment is pending.

Mr. HARKIN. The amendment is pending?

The PRESIDING OFFICER. Correct.

Mr. HARKIN. I understand under the rule I have 5 minutes; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Mr. President, this is a straightforward amendment that protects the ability of workers to receive their pay, including vacation and sick pay and severance pay, when their company goes bankrupt. Under bankruptcy law, wages owed have long been

given an extremely high priority, as they should be. This bill raises the cap on how much pay can be received as a high priority to \$10,000. Unfortunately, however, the bill puts a time limit on this of 180 days. In other words, under the bill a worker gets this preference, gets first-in-line priority preference for getting backpay and wages but only for the last 180 days prior to the company filing for bankruptcy. My amendment simply strikes the 180-day limitation. It doesn't touch the \$10,000 limit.

Why is this important? Many courts have ruled that severance pay is earned during the entire time a worker works for a company. If a worker, let's say, has worked for a company for 10 years and under the contractual agreement gets \$500 per year severance pay for every year one worker worked for the company, if this worker has worked for the company for 10 years, this worker is due \$5,000 in severance pay. The company goes bankrupt. He gets first in line, he gets his priority, but he can only get it for the last 180 days. So, instead of \$5,000, he or she only gets \$250. That is grossly unfair.

We faced a similar problem with vacation pay. Again, vacation pay has been held to accrue over a certain time period, usually 1 year. So a 1-year time period is when you accrue vacation pay. Let's say, though, that your company goes bankrupt. Let's say you have earned vacation pay for the whole year. Now you only get 180 days' credit, so you are getting about half of what you normally would get.

Last, we have the issue of when does the 180-day clock start ticking. A lot of times, a company will file for bankruptcy long after it has closed a division here or a division there or closed an operation someplace and they have laid off people. This happens a lot.

Let's say you have worked for a division in Louisiana, and the company, a national company, closed operations in that plant and they just laid you off. They have not gone bankrupt yet; they laid you off. Then 181 days later or 190 days or 200 days later the company files for bankruptcy, OK? Now that worker who worked in that division wants to get priority for back wages. I am sorry, you are out of luck. Why? Because you only get 180 days going back. You may have been laid off, but the company did not go bankrupt, so now you only get to go back 180 days, and they lose their priority. This, again, is grossly unfair.

Are there other examples where there is no time period for the collection or for getting into priority preference? I would just mention two. There is a priority for creditors of grain storage facilities. Let's say a farmer has grain in a storage facility. We are familiar with that in Iowa. This has happened many times in the past. Let's say the storage facility goes bankrupt. The farmer gets first-in-line priority to get his pay for the grain stored in that facility. There is no time limit. It could be 2 years, 3 years; there is no time limit whatso-

ever. But under this bill, for workers, there is a 180-day time limit.

For the child support and alimony priority—we have heard a lot of discussion about that—there is no cap and there is no time limit. For farmers on grain elevators there is a cap, but there is no time limit. For child support and alimony there is neither a cap nor a back-time limit.

This amendment is very simple. It just says, if you are a worker, if your company goes bankrupt—we leave the \$10,000 cap. That is fair. That has been raised from \$5,000 to \$10,000. It was \$5,000 under the old bill. But it does away with the 180-day time limit. It just takes off that time limit and lets workers get in the priority queue to get severance pay, vacation pay, sick pay—their back wages—when and if the company goes bankrupt.

THE PRESIDING OFFICER. The Senator's time has expired.

MR. HARKIN. Mr. President, if there is no one here seeking to speak on the bill, I ask unanimous consent I be allowed to proceed as in morning business for up to 10 minutes.

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

CONGRATULATING GOVERNOR SCHWARZENEGGER

MR. HARKIN. Mr. President, I rise to congratulate the Governor of California, Governor Schwarzenegger, who just the other day, the day before yesterday, announced his support for a California initiative to get junk food out of our schools. I refer here to a newsclip that came out on Monday. I will read from it.

Governor Arnold Schwarzenegger, a long-time advocate of healthier food in schools, said Sunday that all "junk food" in vending machines on California campuses should be replaced with nutritious snacks such as fresh vegetables. "I think we should use our vending machines in the schools—fill them with good food, with fresh vegetables, with milk and products that are really healthy for the body," said Schwarzenegger, speaking at the annual fitness exhibition here that bears his name."

I say: Bravo Governor Schwarzenegger. Thank you. Thank you for taking the lead on this issue. I hope other Governors will follow suit and follow his leadership.

I have been concerned about our kids' eating habits for many years now. In the 1996 farm bill, I tried to get vending machines taken out of schools. That didn't quite happen, of course. But we are still making the effort to try to get fresh fruits and vegetables to kids in school for healthier eating. More and more, we see schools making agreements with soft drink companies for exclusive contracts. You walk down the hallways in schools: Coke, Pepsi, this and that, all over the place. Kids are bombarded with this. The fact is, these kids in school are creating for themselves bad habits which, when they go into adulthood, lead to chronic diseases. So we have to start with our kids and start in the schools where vending machines and other sources of junk food have a profoundly negative impact on students' nutrition.

A recent study took a group of students who ate only USDA-approved school lunches up through the fourth grade. Then they tracked them into the fifth grade, where they gained access to school vending machines, snack bars, and other food sources. Up to the fourth grade they had only USDA-approved school lunches. In the fifth grade they got to go to vending machines and stuff like that. Guess what the study found. As fifth graders, they consumed 33 percent less fruit, 42 percent fewer vegetables, 35 percent less milk than they did as fourth graders. In addition, they ate 68 percent more deep-fried vegetables—French fries—and drank 62 percent more soft drinks and other sugary beverages. In 1 year, from fourth to fifth grade.

Our Nation spends a whopping \$1.8 trillion on health care, and 75 percent of that goes to treat chronic diseases. A large share of that is preventable. If we are going to turn this situation around, if we are going to move from a current sick care system to a genuine health care system and emphasize prevention and wellness, then our schools are on the front line, and that is why what Governor Schwarzenegger did is so vitally important. Kids today face a minefield of nutritional risks from the time they get up in the morning to the time they go to sleep at night, opportunity after opportunity to eat unhealthy foods.

Guess what. They are bombarded with ads all day long. Whether it is on television, signs in their schools, they are bombarded with ads to eat junk food, drink sugary beverages.

When was the last time you saw an ad for an apple? When was the last time you saw an ad to eat fresh vegetables? No. You see ads to eat all kinds of junk food every single day. That is what our kids see.

Ninety-three percent of our teenagers exceed Government guidelines for consumption of saturated fat. One-quarter of our kids show 5 to 10 early warning signs of heart disease.

This is from the CDC. I am not making this up.

One-third of today's children will go on to develop diabetes.

This is from the Centers for Disease Control and Prevention.

Fifteen percent of America's children and teenagers are overweight. That is 3 times what it was 35 years ago. It is higher than any other industrialized country in the world.

We are placing our kids at risk in schools. They are inundated by candy, soft drinks, snacks high in sugar, salt, and fat. And to make matters even worse, physical education is being squeezed out of schools.

I saw a recent figure that on average in the United States, grade school kids get less than 1 hour of physical activity in school. We are squeezing physical activities out of school. If they are on the football team or the basketball team, or some other varsity, they are all right. But if they are not up to that

standard, what physical activity is there for a kid in school today?

Lastly, I have worked on a bipartisan basis with members on the Senate Agriculture Committee and the Appropriations Committee to increase physical activities in school and get funding for fresh fruits and vegetables. We started this in the farm bill. It has been a great success, giving free fresh fruits and vegetables to kids. We found that when you give free fresh fruits and vegetables to kids in school, they eat them, it solves the hunger pain, and they study better. Guess what. They are not putting their money in the vending machines to buy junk food.

We have had 3 years of experience. We took four States and 100 schools to test this theory, and every single one of those schools has been a resounding success. Now we are up to 9 States and over 200 schools. It is growing.

I again commend Governor Schwarzenegger and hope we can get California to move ahead on that also. The Governor said they were introducing legislation to ban all junk foods in schools. I say, Congratulations, Governor Schwarzenegger. Evidently, this is being written or introduced in California to rid schools of vending machines of sodas, bad foods, and stuff such as that. I again want to congratulate the Governor of California.

He also spoke on Sunday about the "broader need for parents to pay attention to what children eat"—saying "they shouldn't feed them 1,000-calorie cheeseburgers just to avoid an argument."

Good for you, Governor.

He said:

I know it's easy to go in that direction. I know when I come home I don't want to fight at home with my kids about what they should eat. Because there are already fights about their homework and about reading and math.

You've got to make an effort. What you give a child or what you put in your body is exactly what we become. So the more garbage you put in there, the more you're going to look like a garbage disposal.

Again, I want to take the time to commend the Governor for his leadership on this issue. He is a great example of physical fitness. He is also a great example of endurance and of leadership. I hope the Governor of California will not confine himself on this issue only to California. I hope he will take his message nationwide. I hope the other States and other Governors will follow his lead on what he has done in California.

I ask unanimous consent that the articles I read from—one that appeared in the Associated Press and also the Los Angeles Times—be printed in the RECORD.

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

[From the Associated Press, March 7, 2005]

CALIFORNIA GOV. ARNOLD SCHWARZENEGGER SAYS HE WANTS TO BAN JUNK FOOD AT SCHOOLS

(By Erica Werner)

COLUMBUS, OH.—California Gov. Arnold Schwarzenegger wants to pump up his state's students with vegetables, fresh fruits and milk.

"First of all, we in California this year are introducing legislation that would ban all the sale of junk food in the schools," Schwarzenegger said during a question-and-answer session with fans on the final day of the Arnold Classic, the annual bodybuilding contest that bears his name. He said junk food would be pulled from school vending machines in favor of healthier foods, including fruits and vegetables.

After the session Sunday, the governor's aides said Schwarzenegger supports a bill by Democratic state Sen. Martha Escutia that would ban soft drinks at public schools.

The administration also hopes to develop a more comprehensive legislative package dealing with snack foods later in the year, said Chief of Staff Pat Clarey, although she added it might not eliminate all junk food from schools.

Topics at the question-and-answer session ranged from fitness to whether Schwarzenegger wants to be president. Several hundred fans at the Columbus Veterans Memorial auditorium were invited to ask the former world bodybuilding champion whatever they wanted.

With fellow former Mr. Olympia Franco Columbo at his side, Schwarzenegger spent about 50 minutes answering questions.

Many people asked detailed queries about workout routines. Schwarzenegger talked knowledgeably on how best to improve the deltoid muscles—numerous repetitions, tailored to the three separate deltoid muscle groups, front, middle, and back.

Schwarzenegger said he still does 30 to 45 minutes of cardio each day and lifts weights about four days a week. He said he misses doing heavy lifting, but doctors banned it after his heart surgery in 1997.

At one point, Schwarzenegger delivered what amounted to a motivational lecture after a questioner betrayed some discouragement about his own fitness potential. Schwarzenegger told him to visualize his goal, never lose sight of the vision and work toward it.

"As you know, I'm a big believer in the mind," Schwarzenegger said. "Just be positive, and kick some butt."

At the men's bodybuilding finals the night before, Schwarzenegger had called on bodybuilding to get rid of steroids, which are reportedly rampant in the sport. He got one question on the topic Sunday, from a sixth-grader.

The girl asked the governor to explain why he's said publicly he doesn't regret his own past steroid use. Schwarzenegger reiterated that at the time he took the drugs they were new to the market and weren't illegal.

People shouldn't take steroids now—"A, they are harmful for the body, and B, they are illegal," he said.

Schwarzenegger was asked whether he would consider running for president if the Constitution were amended to allow foreign-born citizens to serve in the office. As in the past, he said he's focused on governing California.

"I'm not saying no I'm not interested in it, but I'm not concentrating on it," he said.

Mr. HARKIN. Mr. President, I commend the Governor of California. I say to him that whatever we can do here on a bipartisan basis to back you up,

you have our support and our encouragement. Please take your message nationwide. Don't just keep it in California.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 62

Mrs. BOXER. Mr. President, I call up my Amendment No. 62.

The PRESIDING OFFICER. The amendment is pending.

Mrs. BOXER. Mr. President, is the rule 10 minutes per side?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mrs. BOXER. Will my friend tell me when I will have 1 minute remaining?

The PRESIDING OFFICER. Absolutely.

Mrs. BOXER. Mr. President, in the next 5 minutes I want to describe this amendment. I cannot imagine anyone in the Senate voting against this amendment. Having said that, I predict that this amendment will not be agreed to because there seems to be some type of agreement going on that this bill can not change at all, in any way, shape, or form. But I want to give the Senate a chance.

When I was growing up, my mother said, If you ever borrow anything, give it back. Try not to borrow money, but if you borrow money, give it back as fast as you can.

I think all of us here understand that to be a responsible person, you have to be responsible for your debts. There is no question about that. It is not right to borrow money and then turn your back on the person who extended that credit to you, whether it is an individual or a credit card company or a bank. But in this bill there seems to be absolutely no bounds. It seems to be that the person who lent you the money has no responsibility whatsoever to be diligent about it, to be fair about it, to be reasonable about it, or, frankly, to be smart about it. And the credit card companies know they have the perfect bill coming toward them. There is absolutely no responsibility placed on them.

I ask anyone listening to this debate to think about how many credit card applications you receive in the mail in a week's time, in a month's time. Once I started saving it up. Then they started sending them to my grandson. He is 9. I was surprised they didn't send it to our cat. I suppose they would, if cats could pay interest.

But let me tell you about this particular egregious situation I am trying to fix. I think it would shock Americans to understand this. The fastest growing part of the credit card business is the young people in this country. The credit card companies entice

our young people to go into debt, go into debt, and they know the sky is the limit as to what they can charge for that debt. Is it 10 percent? No. That would be low. Is it 20 percent? That would be low. There was an amendment here to cap it at 36 percent, and that failed. We are talking about taking a young person who doesn't have a clue and offering them credit cards.

If I were to ask you how many cards does the average young person have—people between 18 and 24—I would say one or two—the answer is six credit cards. This is the fastest growing group.

That is also why the credit card companies go ahead and give more and more credit cards to people who were defaulting the most. Frankly, it is because they are still making a mint. Credit card profits have gone up in the last 10 years 100 percent.

When you analyze the stories—I have read them in the Wall Street Journal—you find they are getting paid back for sure, but they are not getting the full 30-percent interest. But the poor people who are caught in this have a real problem.

Here is what the amendment says. If a credit card company issues a seventh credit card to someone below the age of 21 without a responsible party co-signing, and if that individual has a job that pays less than the poverty level, then in fact if there is a default the judge should take into consideration the facts. It is as simple as that. Why wouldn't a credit card company ask you that simple question, How many cards do you have? And, What is your income? After all, this is unsecured debt. It is not secured by anything but the person.

We are saying, if, in fact, an individual defaults, they are younger than 21, they had no cosigner, they earn below the poverty line, they already have six cards, if they wind up in bankruptcy court, the judge should consider this situation.

This is about responsibility on the part, yes, of the person who is using the card, but also on the part of the credit card companies.

I yield the floor.

AMENDMENT NO. 67

Mr. DODD. Mr. President, I urge my colleagues to support the amendment I offered yesterday. It is an amendment designed principally to protect children and families caught in the bankruptcy situation.

Let me state again at the outset, clearly there is a need to reform the bankruptcy laws—none of us disagree with that—but it must require a sense of balance. People are moving through the bankruptcy courts, but we also need to keep in mind that families, particularly children, the innocents in this, are not going to be so disadvantaged by the process that we create a more serious problem than the bankruptcy issue suggests.

Under this bill as presently crafted, there are several areas where we could

do a far better job of seeing to it that children and families are going to be protected to the extent possible, while creditors are also going to have an ability to reach assets. This bill provides too strong a straitjacket for families.

I offer four different parts in this amendment. The first modifies the means test to require greater flexibility and reasonableness in calculating a debtor's ability to pay. Under the bill you have \$1,500 a year as the total amount allowed for educational expenses for children. The reality of the 21st century, putting aside parochial school education, even for a public school, \$1,500 is too low a figure for the children to get the proper education they need. Our amendment raises that ceiling from \$1,500 to \$5,000.

Second, the amendment ensures that support payments, child support payments, alimony, if there are any resources coming from the earned income tax credit or the child tax credit, specifically money intended to support children and their needs, should not go to creditors. Those moneys ought to be kept out of the estate. Again, child support, alimony, EITC, child tax credits. The bill does not presently allow that. We specifically passed that legislation to assist poor families and families with children.

Third, the amendment enables debtors going through bankruptcy to keep personal property normally found in and around the home. The bill does list some new items that were not in the earlier versions of the bill. That is a simple reasonableness test. Rather than having a finite list, if these goods have no resale value at all, and they are used for children and used for providing for the needs of the household, they ought to be excluded. That is the third part of this amendment.

Fourth, the amendment ensures that debtors are not forced into bankruptcy court to seek to prove that food, diapers, school uniforms, and other items are luxury items. Under the present law, the bankruptcy current law allows \$1,225 to be charged within 60 days of filing bankruptcy. This bill drops that number to \$500 within 90 days. That is a totally unrealistic number. Anyone who has young children will tell you \$500 over 90 days to provide for your children is far too low. We tried to offer a compromise, saying any charges amounting to \$1,000 within 70 days. As I say, existing law is \$1,225 within 60 days. The bill says \$500 within 90 days. Our amendment says \$1,000 within 70 days.

Lastly, as part of this amendment, if the creditors think these are luxury items, let them make the allegation in court. This bill requires these dependent women, most of them single women raising children, have to prove these are not luxury items. The burden ought to be on the opposite side of the equation.

That is what the amendment is designed to do. There are four pieces to

it. It is specifically designed to offer some relief to the innocents, the children and the families who are going through this process—not to blame them or put them in an untenable situation.

This amendment is supported by a long list of organizations across the country dealing with women and children. I ask unanimous consent that list be printed in the RECORD.

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

ACES, Association for Children for Enforcement of Support, Inc., American Association of University Women, American Medical Women's Association, Business and Professional Women/USA, Center for Law and Social Policy, Center for the Advancement of Public Policy, Center for the Child Care Workforce, Children NOW, Children's Defense Fund, Church Women United, Coalition of Labor Union Women (CLUW), Equal Rights Advocates, Feminist Majority, Hadasah, International Women's Insolvency & Restructuring Confederation ("IWIRC"), MANA, A National Latina Organization, National Association for Commissions for Women (NACW), National Black Women's Health Project, National Center for Youth Law, National Council of Jewish Women, National Council of Negro Women, National Organization for Women.

Mr. DODD. This bill deserves to make some changes. I hope our colleagues look closely at what is in the bill and support this amendment and see we can provide a sense of balance and relief for children and families who need some protection when they go through the bankruptcy process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDING OFFICER. The minority time is expired and the majority has 5 minutes on each of four amendments.

AMENDMENT NO. 62

Mr. HATCH. Mr. President, let me talk about the Boxer amendment for a minute or two. The purpose of this amendment is to restrict credit availability for young adults.

Others believe that using credit cards to build a history is a laudable objective for young adults. This amendment does not distinguish between legitimate uses by young adults from other uses. It applies to any person under 21, regardless of his or her financial independence or employment situation.

Also, note that 18-year-olds can serve in the military, get married, vote, and in most States serve on juries, all without a cosigner.

This bill does address the issue of credit card debt and younger adults. Title XII of the bill provides for a study regarding the impact of the extension of credit to individuals who are claimed as dependents for Federal income tax purposes and are in college.

The same section provides other relevant credit card-related reforms that are the result of careful negotiation. These include several amendments to

the Truth in Lending Act which includes creating increased disclosure requirements for credit card statements and mandating the credit card companies assist borrowers in determining how long it will take to pay off their credit card balances; requiring certain additional disclosures to borrowers buying and refinancing their homes; require additional disclosures regarding credit card so-called introductory rates; extending Truth in Lending requirements to Internet-based credit card solicitations; adding new disclosures related to the credit card late fees; and prohibiting cancellation of credit cards solely due to borrowers' failure to incur finance charges.

These are good changes, in my view, and the view of the majority of the Senate. They were all carefully negotiated over the last 8 years. We do not need to come in now and make further revision to delicate compromises such as this. I urge my colleagues to vote against the Boxer amendment. It would do more harm than any good.

## AMENDMENT NO. 67

I wish to speak against Senator DODD's amendment 67. This is an omnibus amendment. There is nothing else to call it. This late in the game, a successful amendment usually targets specific provisions in the bill for improvement. And getting agreement on one of these rifleshoot amendments can be like herding cats.

Quite frankly, this is a message statement. It asks us to protect families. This is a noble goal, but it is not one served by this amendment. This amendment alters the carefully negotiated means test to permit nearly all filers to avoid a presumption of abuse. In some respects, it is redundant.

For example, it lists as expenses many things that are already covered in the IRS standards used in the bill to determine appropriate expenses. In other areas, it is excessive. For example, it increases the allowable expenditures for private school education from \$1,500 to \$5,000.

The worst part of this is it created a category of miscellaneous expenses. This is not just a loophole. My gosh, you could drive a truck through the opening for abuse this amendment puts through the middle of the means test, a test that has the purpose of a reduction in abusive bankruptcy filings.

I said it once, and I say it again. This means test is the heart of this bill. The means test is fair. The means test has been carefully negotiated between Democrats and Republicans over 8 years of time. I have to oppose any effort to revise the means test at this late day. I urge my colleagues to vote against this amendment.

## AMENDMENT NO. 110

I rise in opposition also to the Durbin amendment. It takes a broad swipe at the means test again. First, the very purpose of the means test is to treat genuinely impoverished filers fairly. If you are below the State median income, you are not subject to the means

test. It is as simple as that. This amendment undermines the ability of a court to verify a person's income when he or she is filing for bankruptcy.

This amendment would remove the basic requirement that debtors fill out certain forms to verify their income. You have to fill out forms to get a driver's license, to get a job, to apply for a retirement plan. For example, when an individual applies for food stamps, there is a complete application process to verify income and assets before this benefit is approved. Is it too much to ask that if the Government is going to allow you to liquidate all of your debts, you at least show the court definitive proof of your income?

Instead, this amendment allows a person simply to declare that his income is below the State median income. All he has to show are "calculations or other information." In other words, take their word for it. That seems to open the door to the fraud this bill is designed to prevent.

I believe most people are honest, but inevitably there are some applicants who will take advantage of the looser requirement. As Ronald Reagan said in a different context: Trust but verify.

I urge my colleagues to vote against the Durbin amendment, as well.

## AMENDMENT NO. 66

I oppose the Harkin amendment. This was part of a problematic Rockefeller amendment we have already voted down. I respect my colleagues' dedication to the issue, but I must urge my colleagues to vote no.

I am pleased we invoked cloture yesterday by a vote of 69-31. If that is not bipartisan, I do not know what is. This bill has been in the works for 8 years now, and I hope we can soon pass it for the fifth and final time. My colleague from Wisconsin has 14 amendments pending. I also understand there are roughly another six or so Kennedy amendments and two Durbin amendments. That is 22 amendments between these Senators.

I wonder if my colleagues know how many other amendments are pending. The answer is three: one from the ranking member of the Judiciary Committee, one from Senator AKAKA, and one from Senator TALENT. What does this tell you?

I respect my colleagues from Wisconsin, Massachusetts, and Illinois, but why are they dragging out this process? Their amendments constitute roughly 88 percent of the remaining omnibus bill. I suspect that even if we accepted every one of the amendments, all three would not vote for this legislation. So this is important. I respect the right of Senators to bring up their germane amendments in postcloture situations. If they want to do it that way, they certainly can.

I oppose every one of those amendments. I think a majority of the Senators should oppose those, as well. We need to get this bill done. We know we have to keep it intact in order to get the House to take it and get it signed

by the President. It is time to bring this to an end. We have been at it for 8 years and we have worked to accommodate everyone we possibly could. It has been a bipartisan vote every time, overwhelming bipartisan vote every time. By gosh, it is time to vote on this bill.

How much time remains?

The PRESIDING OFFICER. There is 13 minutes.

Mr. HATCH. Is that my time? I am prepared to yield back the remainder of my time and proceed to a vote.

Do we have the yeas and nays on all four amendments?

The PRESIDING OFFICER. We do not.

Mr. HATCH. I ask for the yeas and nays on all four amendments.

The PRESIDING OFFICER. All time is yielded back.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered on all four amendments.

Mr. HATCH. I ask unanimous consent that after the first 15-minute rollcall vote the remaining three votes be 10 minutes each.

The PRESIDING OFFICER. That order has been entered.

The question is on agreeing to the amendment of the Senator from Illinois, Mr. DURBIN.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 42, nays 58, as follows:

## [Rollcall Vote No. 31 Leg.]

## YEAS—42

Akaka	Durbin	Lincoln
Baucus	Feingold	Mikulski
Bayh	Feinstein	Murray
Biden	Harkin	Nelson (FL)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Kennedy	Reed
Cantwell	Kerry	Reid
Clinton	Kohl	Rockefeller
Conrad	Landrieu	Salazar
Corzine	Lautenberg	Sarbanes
Dayton	Leahy	Schumer
Dodd	Levin	Stabenow
Dorgan	Lieberman	Wyden

## NAYS—58

Alexander	DeWine	McConnell
Allard	Dole	Murkowski
Allen	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Sessions
Bunning	Graham	Shelby
Burns	Grassley	Smith
Burr	Gregg	Snowe
Carper	Hagel	Specter
Chafee	Hatch	Stevens
Chambliss	Hutchison	Sununu
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Coleman	Johnson	Thune
Collins	Kyl	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	
DeMint	McCain	

The amendment (No. 110) was rejected.

## AMENDMENT NO. 66

The PRESIDING OFFICER. Under the previous order, there will now be 2



minutes of debate equally divided on the Harkin amendment No. 66. The Senator from Iowa.

Mr. HARKIN. Mr. President, this amendment basically protects workers who are able to take a priority preference in back wages, vacation pay, severance pay, and sick pay when a company goes bankrupt.

Under the bill, there is a limit of \$10,000. That is fine; I do not touch that. This amendment lifts the 180 days. For example, let's say a worker has worked for a company for 10 years and they get \$500 a year severance pay. The company goes bankrupt. Normally, you get \$5,000, but because of the 180 days, you only get \$250 for which you get a priority; otherwise, you get in line with the other creditors.

What this does is lift the 180 days. There are other examples. If a farmer today has a warehouse receipt for grain in an elevator, there is no time limit on that. They can go 2, 3, 4 years. For alimony there is no time limit. For child support, there is no time limit. There ought not be an arbitrary time limit for a worker who has backpay, sick pay, or severance pay coming. That is all this amendment does.

I cannot believe the House will not send this to the President if we adopt this amendment. Do not even try to sell that to me.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Madam President, I yield back all time and ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

The question is on agreeing to amendment No. 66. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 32 Leg.]

#### YEAS—48

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Clinton	Kohl	Salazar
Collins	Landrieu	Sarbanes
Conrad	Lautenberg	Schumer
Corzine	Leahy	Snowe
Dayton	Levin	Specter
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Wyden

#### NAYS—52

Alexander	Coburn	Enzi
Allard	Cochran	Frist
Allen	Coleman	Graham
Bennett	Cornyn	Grassley
Bond	Craig	Gregg
Brownback	Crapo	Hagel
Bunning	DeMint	Hatch
Burns	DeWine	Hutchison
Burr	Dole	Inhofe
Chafee	Domenici	Isakson
Chambliss	Ensign	Kyl

Lott	Santorum	Thomas
Lugar	Sessions	Thune
Martinez	Shelby	Vitter
McCain	Smith	Voinovich
McConnell	Stevens	Warner
Murkowski	Sununu	
Roberts	Talent	

The amendment (No. 66) was rejected.

#### AMENDMENT NO. 62

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Boxer amendment, No. 62.

Will the Chamber please be in order.

The Senator from California.

Mrs. BOXER. Here are the facts, my colleagues. The fastest growing segment of bankruptcies occurs in Americans who are 25 years and younger. The average number of credit cards a college senior has is not two, three, or four, but six. The average senior in college has six credit cards and credit card companies are marketing to our young people at rock concerts, on college campuses. We want responsibility but on all sides.

My amendment puts a modicum of responsibility on the credit card companies. It simply says a bankruptcy judge should consider an appropriate response if a credit card company has given a card to a person who is under the age of 21, has no responsible co-signer, an income below the poverty level, and the person already had six credit cards.

My friends, I hope you will not march down and vote "no" against this amendment. How can you explain at home that a credit card company would have no responsibility if they have given a seventh credit card to a person below the age of 21 who has income below the poverty level? I hope you will support the Boxer amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. MCCONNELL. I yield back our time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 40, nays 60, as follows:

[Rollcall Vote No. 33 Leg.]

#### YEAS—40

Akaka	Feingold	Mikulski
Biden	Feinstein	Murray
Bingaman	Harkin	Obama
Boxer	Inouye	Pryor
Byrd	Jeffords	Reed
Cantwell	Kennedy	Reid
Chafee	Kerry	Rockefeller
Clinton	Kohl	Salazar
Conrad	Landrieu	Sarbanes
Corzine	Lautenberg	Schumer
Dayton	Leahy	Stabenow
Dodd	Levin	Wyden
Dorgan	Lieberman	
Durbin	Lincoln	

#### NAYS—60

Alexander	DeMint	McCain
Allard	DeWine	McConnell
Allen	Dole	Murkowski
Baucus	Domenici	Nelson (FL)
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Roberts
Bond	Frist	Santorum
Brownback	Graham	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Burr	Hagel	Snowe
Carper	Hatch	Specter
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Sununu
Cochran	Isakson	Talent
Coleman	Johnson	Thomas
Collins	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner

The amendment (No. 62) was rejected.

Mr. MCCONNELL. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. I ask unanimous consent the last vote in this series in relation to the Dodd amendment occur at 2:45 today; provided further that following that vote, the Senate proceed to vote in relation to the Kennedy amendment numbered 68; further that no amendments be in order to the amendments prior to the vote.

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

The Senator from Hawaii.

#### AMENDMENT NO. 105

Mr. AKAKA. Madam President, I rise today to speak on my pending amendment, No. 105.

Section 106 of the bill does not allow consumers to declare personal bankruptcy in either Chapter 7 or Chapter 13, unless they receive a briefing from an approved nonprofit credit counseling agency within six months of filing. The bill also requires each consumer who receives bankruptcy protection to take a credit counseling instructional course. The credit counseling instructional course requirement is intended to provide financial education to consumers who declare bankruptcy so they can attempt to avoid future financial problems.

Approximately one-third of all credit counseling consumers enter a debt management plan. In exchange, creditors can agree to offer concessions to consumers to pay off as many of their debts as possible. These concessions can include a reduced interest rate on the amount they owe and the elimination of fees. However, most credit card companies have become increasingly unwilling to significantly reduce interest rates for consumers in credit counseling. A study by the National Consumer Law Center and the Consumer Federation of America revealed that 5 of 13 credit card issuers increased the interest rates they offered to consumers in credit counseling between 1999 and 2003.

The amendment would amend section 502(b) of the bankruptcy code to prevent unsecured creditors, primarily credit card issuers, from attempting to collect accruing interest and additional fees from consumers in credit

counseling if the creditor does not have a policy of waiving interest and fees for debtors who enter a consolidated payment plan at a credit counseling agency.

Since it appears that Congress will require that consumers enter credit counseling before filing for bankruptcy, we must ensure that credit counseling is truly effective and a viable alternative to bankruptcy.

Credit card issuers, undermining the good intentions of consumers who enter into credit counseling, have sharply curtailed the concessions they offer to consumers in credit counseling, contributing to increased bankruptcy filings. According to a survey by VISA USA, 33 percent of consumers who failed to complete a debt management plan in credit counseling said they would have stayed on the plan if creditors had lowered interest rates or waived fees.

A large body of research, conducted by such entities as the Congressional Budget Office and the Federal Deposit Insurance Corporation, shows that aggressive lending practices by credit card issuers have contributed to the current high level of bankruptcies in this country. Credit card companies have an obligation to ensure that effective alternatives are readily available to the consumers they aggressively pursue.

As a show of support for the effectiveness of consumer credit counseling, especially as an alternative to bankruptcy, credit card issuers should waive the amount owed in interest and fees for consumers who enter a consolidated payment plan. Successful completion of a debt management plan benefits both creditors and consumers. For many consumers paying off their debt is not easy. My amendment will help people who are struggling to repay their obligations. I encourage all of my colleagues to support this amendment to help consumers enrolled in debt management plans to successfully repay their credits, free themselves from debt, and avoid bankruptcy.

My amendment has been endorsed by the Consumer Federation of America, U.S. Public Interest Research Group, Consumer Action, and the National Consumer Law Center.

I ask unanimous consent that a letter of support for my amendment be included in the RECORD.

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

CONSUMERS UNION,  
CONSUMER FEDERATION OF AMERICA,  
March 7, 2005.

Re support for Akaka credit counseling and payday loan amendments to bankruptcy bill.

Hon. DANIEL K. AKAKA,  
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: The undersigned national consumer organizations strongly support your amendments to the bankruptcy bill (S. 256) that would encourage more responsible lending by payday loan companies and keep more consumers in credit counseling and out of bankruptcy.

#### MAKING CREDIT COUNSELING A MORE SUCCESSFUL ALTERNATIVE TO BANKRUPTCY

S. 256 requires consumers to seek credit counseling within six months of filing for bankruptcy. However, the credit card companies that created credit counseling have taken steps in recent years that undermine it as a viable alternative to bankruptcy for some consumers. By slashing funding for legitimate credit counseling agencies and charging consumers in credit counseling higher interest rates than in the past, credit card companies are leaving debt-choked Americans with few options other than bankruptcy.

If Congress is going to require that consumers enter credit counseling before filing for bankruptcy, it must ensure that credit counseling is truly an effective and viable alternative to bankruptcy. This amendment would stop a credit card company from attempting to collect on debts in bankruptcy unless the creditor has a policy of waiving interest rates for consumers who enter credit counseling.

Consumers who enter a credit counseling "debt management plan" agree to discontinue credit card use and to make one consolidated payment to the credit counseling agency, which then forwards the funds to the appropriate credit card company. In exchange, creditors agree to offer two key "concessions" to help consumers pay off as much of their debts as possible: a reduced interest rate on the amount they owe and the elimination of fees that have accrued.

Unfortunately, credit card companies in recent years have become increasingly unwilling to reduce interest rates for consumers in credit counseling, which has led to more bankruptcy filings. According to a study by the National Consumer Law Center and Consumer Federation of America, five of 13 major credit card issuers increased the interest rates they offered to consumers in credit counseling between 1999 and 2003. Currently, only two major credit card issuers (Wells Fargo and American Express) completely waive all interest for consumers in credit counseling. The majority of other major credit card companies charge interest rates in credit counseling above 9 percent, with issuers like Capital One, General Electric and Discover charging rates of 15 percent or more.

The increasing refusal of creditors to offer low interest rates causes more consumers to drop out of credit counseling and to declare bankruptcy. According to a survey by VISA USA, one-third of consumers who failed to complete a debt management plan in credit counseling said they would have stayed on the plan if creditors had further lowered interest rates or waived fees. Moreover, almost half of those who dropped off the plan had or were going to declare bankruptcy.

It is ironic that the same creditors whose aggressive and reckless lending practices have contributed to the increase in bankruptcies in this country have weakened credit counseling in recent years. It is hypocritical for the credit card industry to demand that Congress give them bankruptcy relief while closing off credit counseling as an effective alternative for many consumers.

#### PROHIBITING THE RECOVERY OF PREDATORY PAYDAY LOANS

This amendment would prohibit payday lenders from having a claim on these loans in bankruptcy. Lenders who entice cash-strapped consumers to write checks without money in the bank to cover them as the basis for making "payday loans" should not be allowed to use the bankruptcy courts to collect. Payday loans trap borrowers in a cycle of debt when consumers flip loans to keep their checks from bouncing.

Last year, consumers paid \$6 billion to borrow \$40 billion in small cash advances from over 22,000 payday loan outlets. These loans of \$100 up to \$1,000 are secured by personal checks or electronic access to bank accounts and must be repaid in full on the borrower's next payday. Lenders charge annual interest rates on these loans that begin at 390 percent, with finance charges of \$15 to \$30 per \$100 borrowed.

Payday lending condones check-kiting as a financial management tool and encourages the unsafe use of bank accounts. Loans phased on check/debit-holding get paid before other obligations, due to the severe adverse consequences of failing to make good on a check. Some lenders threaten criminal prosecution or court martial of military consumers for failure to make good on the check used to get a payday loan. If the consumer files bankruptcy to stop the cycle of debt, some lenders then try to convince the bankruptcy court that the payday loans should not be discharged.

Consumers need comprehensive small loan protections, reasonably-priced alternatives to payday loans, and sound financial education. In the meantime, Congress should prevent any lender that entices consumers to write checks without funds on deposit or to sign away electronic access to their bank accounts from also using the bankruptcy courts to collect on their usurious loans.

If this nation is truly going to reduce bankruptcies, lenders must first exercise more responsible lending decisions and be more responsive to consumers who show a genuine interest in resolving their debt problems. We applaud you for moving to make payday and credit card lenders more accountable in their treatment of consumers.

Sincerely,

JEAN ANN FOX,  
Director of Consumer  
Protection, Con-  
sumer Federation of  
America.

TRAVIS B. PLUNKETT,  
Legislative Director,  
Consumer Federa-  
tion of America.

SUSANNA MONTEZEMOLO,  
Policy Analyst, Con-  
sumers Union.

LINDA SHERRY  
Editorial Director,  
Consumer Action.

EDMUND MIERZWINSKI,  
Consumer Program Di-  
rector, U.S. Public  
Interest Research  
Group.

JOHN RAO,  
Staff Attorney, Na-  
tional Consumer  
Law Center.

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

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I would like to have the attention of the Senate to discuss my remaining amendments to the bankruptcy bill. I think my colleagues are aware that I strongly oppose this bill and that I am



very disappointed in the process that has brought us to this point. I do not believe the sponsors of this bill and its supporters in the other body have dealt fairly with the proposed amendments.

I understand the Senator from Utah came to the floor earlier in the day and was complaining that I had a number of amendments and that I did not intend to vote for the bill.

I have been a legislator for 22 years. This is not an auction. Even if you are going to vote against a bill, if you have an amendment you believe will make it a better bill, it is still a worthy consideration. I was told in the committee, where I wanted to offer many of these amendments, that I should not offer them, that I should wait until the bill came to the floor to offer the amendments. So in most cases that is exactly what I did, being assured there would be a good faith response and consideration of the amendments. Well, of course, that is not what has happened to date. And I categorically reject the idea that simply because you do not think a bill is good, you do not have a proper role on the floor of the Senate in trying to improve it.

This has not been a legislative process worthy of the Senate. Members of the Judiciary Committee, as I just said, were implored to save their amendments for the floor. Then, when we got here, we were told no amendments could be accepted. It was a classic bait and switch. Negotiations have been minimal and pro forma. Extremely reasonable amendments were rejected supposedly because they were not drafted correctly, according to the sponsors, but there was no willingness to work on the language of the amendments so they could become acceptable.

One of the most disheartening examples of this way of dealing with good faith amendments was the treatment of the amendment offered by the Senator from Florida concerning identity theft. Senator NELSON simply wanted to give some special consideration to people who are forced into bankruptcy because other people—criminals, in fact—ran up debts in their names. It is awfully hard to argue with a straight face and pretty hard to claim that victims of identity theft should have to pay at least some of their debts if they have a higher than median income. The debts are not even theirs. Believe it or not, this bill might actually force someone to file for chapter 13 and make payments on debts for 5 years that were not even run up by the person filing for bankruptcy. I find this to be incredible. Unfortunately, the response from one of the bill's cosponsors was: "well, you have a good point here, but your amendment is just too broad."

In the Senate I have come to love in my 12 years here, the Senate I served in just a few years ago when we last considered the bankruptcy bill, Senators and their staffs would have sat down and they would have worked out

language that was not too broad. There would have been some negotiation. In many cases an agreement would be reached. But in this debate that kind of legislating is apparently forbidden.

What is most disheartening is that so many Senators sent here to represent their constituents, to exercise their independent judgment for the good of their States and the country, have been willing to blindly follow instructions from the shadowy coalition of groups that are behind this bill—mainly the credit card industry—and vote down even the most reasonable of amendments. It is just sad when there is no debate on amendments, no discussion, no negotiation, just an edict from outside of the Senate, and the "no" votes follow every time.

Last night I offered a very important amendment concerning small businesses. I spoke for 10 or 15 minutes about the amendment and explained some new data on small business bankruptcies that I think shows these provisions are actually very wrongheaded. After what has gone on here, I, of course, didn't expect to win the amendment, but I did think we might have a debate of sorts. The sponsors of the bill didn't even bother to come down and debate. Not one Senator made a single response to my arguments. They sent an emissary to deliver the message right before the vote that the sponsors expected a "no" vote. Nonetheless, I have not given up hope that some real legislating can still take place in the waning moments of our consideration of this bill.

I have a number of amendments, 14 to be exact, pending before this body. They are entitled to receive votes before we vote on final passage. They are reasonable and modest amendments. They are not so-called message amendments. They are not intended to be poison pills or bring down the bill by causing a huge disagreement with the House. They are intended to improve the bill because this bill is now not an academic exercise, as we know. It is going to become law. It is going to be the first bankruptcy reform of any great substance since 1978. It is going to become law, probably in a matter of weeks, and it will have a real impact on real people all over this country.

Last night my staff was able to have some discussions about these amendments with staff for the sponsors. I am hopeful that some of these amendments can be accepted or negotiated. I am prepared to entertain any reasonable offer. If I feel the sponsors have made a legitimate effort to look closely at my amendments and consider them with an open mind, and if some number of those amendments are accepted, I will not seek votes on all the amendments. No one likes a vote-arama, as it has come to be known, when we vote on a bunch of amendments in a row and often people don't know what they are voting on. But we will have one if the attitude that has been on display for the last week and a half continues.

I know my bargaining position is not strong. But I hope my colleagues will look at these amendments and realize that they are modest and might actually improve the bill in a way that wouldn't offend anyone in this entire body from the point of view of their philosophy about what bankruptcy law should be. Writing laws that work is what the Senate is supposed to do. Here is an opportunity to do that.

Let me talk briefly about each of these amendments because I do not intend to call each one up individually for debate. Some of them are very simple. Let me reiterate that I am open to discussion on any of these amendments. If there is something about the drafting that could be improved, I urge the sponsors to work with me and help me perfect the amendments so they can become part of the bill in a managers' package or perhaps even by unanimous consent.

The first amendment I will discuss is amendment No. 92 which has to do with section 106 of the bill on credit counseling and education. The bill requires credit counseling and credit education for people who file for bankruptcy. Section 106 of the bill requires debtors to obtain a credit counseling briefing before filing a bankruptcy case and to take a credit education course as a condition of receiving a discharge. However, the provisions provide no recourse for debtors who have exigent circumstances that would make it actually impossible for them to take a credit education course after filing or to get credit counseling, even during the 30-day grace period the bill now allows.

Let me give a few examples. I know these cases may be rare, but they are real. There are people in this country who are homebound and do not have a telephone or Internet access. I wish there weren't, but there are. Are we going to decide in the Senate that these unfortunate citizens can never file for bankruptcy because they are in that situation? How about people who suffer from dementia caused by Alzheimer's or some other disease? They sometimes have to file for bankruptcy because of massive medical bills, and they can do so through someone who has power of attorney. Do we think anything is to be gained by requiring a debtor who is ill with a terrible, incurable disease, not even competent to sign legal papers anymore, to take a credit education course?

How about U.S. soldiers fighting in Iraq or Afghanistan or serving anywhere overseas? It is a tragedy that some of our young men and women serving their country have to file for bankruptcy, but that is actually happening right now every day. Yes, there is Internet access in Iraq, but do we want to require a soldier to sit down at a computer to take a credit counseling or credit education course while they are in Iraq in order to protect his or her family back home from financial ruin?

By the way, the Servicemembers Civil Relief Act does not address this problem. Nothing in that statute would excuse members of the military, even those on active duty serving overseas, from the credit counseling and education requirements. Our fighting men and women are already having to file for bankruptcy despite the protections of that law. My amendment creates simply a safety valve to address this problem by giving courts discretion—it just gives them discretion—to waive the credit counseling and education requirements based on a sworn statement filed by the debtor with the court.

The bill also fails to address the potentially prohibitive cost of credit education to some debtors. In contrast, section 111, which addresses credit counseling services, requires credit counseling organizations to provide counseling without regard to ability to pay the fee for such a service. My amendment borrows the same language, requiring credit education to be offered for a reasonable fee and offered to all persons without regard to ability to pay the fee.

These changes are essential to ensuring that the bankruptcy system is still an option available for those who truly need it. Let's not make these counseling and education requirements, which I think have a great deal of merit, into some kind of a trap for some unusually situated but still good-faith debtors whom the bankruptcy decision is actually designed to help. I know this issue is particularly important to Senator SESSIONS. I hope to be able to work with him to reach agreement. He and I have worked together well on this and a number of other issues in the past with the regard to the bankruptcy bill. I hope he will follow suit on this as well.

The amendment I have just discussed deals with the impact of this bill on a very few, unusual, and very hard-luck debtors. The same is true of the next amendment I want to discuss concerning current monthly income. There are actually two amendments I have filed on this topic, amendment No. 96 and amendment No. 97. I am suggesting two alternative approaches to deal with the same problem.

Section 318 requires debtors in chapter 13 whose current monthly income is over the median to file a 5-year plan rather than a 3-year plan. Requiring debtors to file a 5-year plan means it will take them longer to get back on their feet and they will end up paying more money to emerge from bankruptcy. Only those with a higher income should be subjected to this longer plan. But because of the way the income threshold is calculated in the bill, there is a great possibility of arbitrary and unfair results.

Whether this requirement applies depends on the income that debtors earn in the 6 months before bankruptcy rather than their actual income at the time of filing. In other words, the median income test is based on what you

used to make, not what you make at the time of bankruptcy. To understand this problem, imagine person A has an income of \$60,000 and that the State's median income is \$45,000. A month before bankruptcy, she loses her job and is forced to take a job that pays only \$30,000. Under the bill, her current monthly income works out to \$5,000, even though she only makes \$30,000 at the time of the bankruptcy and even if she never finds a higher paying job. So she would be forced into a 5-year plan, even though her real income is well below the threshold the bill's drafters apparently had in mind.

Imagine person B has an income of \$40,000 before and after filing for bankruptcy. Because person B's income is below the median, she will be allowed to enter a 3-year plan even though she actually makes more than person A. So the definition of current monthly income as the average of the prior 6 months' income may not make sense in some cases.

My amendments provide two alternative ways to allow for a different and more accurate monthly income to be calculated. In addition, under my amendment, if a debtor's income decreases during the bankruptcy case to less than the median income, then a debtor who is at that time on a 5-year plan can seek to have the plan reduced to a 3-year plan.

Incidentally, the bill already provides a safety valve for calculating current monthly income in chapter 7. The court can reduce the income used for the means test if special circumstances are present. Special circumstances such as job loss or a sharp reduction in income from a home business would certainly qualify. I think it is an oversight that this was not done for chapter 13. So I hope the sponsors will simply fix this problem.

This change also needs to be made in another section of the bill where current monthly income plays a significant role; that is, in determining whether a debtor will have to use the restrictive IRS standards under the means test to figure out what living expenses will be permitted.

Again, it is unfair to someone filing in chapter 13 to make that determination based on past income rather than what the person actually makes.

This is a commonsense fix. We shouldn't import the means test to chapter 13 without allowing for special circumstances adjustments to income. Either of my amendments would bring chapter 13 in line with chapter 7 on this score.

The next amendment I want to discuss also has to do with chapter 13. There is a peculiar problem in this bill. I have often called it a bill that is at war with itself. What I mean by that is that the bill's overriding purpose—the argument that we have heard over and over on the floor in the past week 26 and a half—is to get more people to file for bankruptcy under chapter 13, which will require them to pay some of their

debts over a 3- or 5-year period before getting a discharge of their remaining debts. This is what the means test is all about—getting debtors to pay some of their debts if they are able. That is chapter 13. You would think, then, that the bill's sponsors and supporters would want to make sure that chapter 13 remains a viable option for those debtors. But the bill also includes a number of provisions that make it less advantageous to file in chapter 13 and harder to complete repayment plans. That is a bill at war with itself, and I predict this bill will have very bad consequences if it is adopted as it stands. The chapter 13 bankruptcy trustees and judges have certainly told us that over and over again for the past 8 years. Apparently, no one wants to listen.

One amendment I have offered to try to undo one of the problems this bill creates for chapter 13 amendment No. 95, having to do with discharge of back taxes. Current bankruptcy law allows debtors who complete chapter 13 payment plans to discharge all taxes that were owed more than 3 years before the time of the petition. This allows debtors to look forward to someday improving their financial situation without facing a lifetime of debt repayment for old taxes. But the bill makes it less advantageous to file for bankruptcy under chapter 13 by disallowing the discharge of many of these older taxes.

Under section 707 of the bill, a standard now applicable only to chapter 7 would be applied to chapter 13. In chapter 7 cases, debtors may only discharge old taxes if they filed a tax return for those taxes at least 2 years before filing for bankruptcy. That limitation does not currently apply to chapter 13 cases. By the way, under chapter 13 today, as in chapter 7, taxes owed for the last 3 years must still be paid in full as priority debts, which enables the IRS to collect what is available from the debtor's disposable income with very low collection costs, and older taxes are paid pro rata with other creditors for duration of the plan. Society benefits at the completion of a debtor's chapter 13 payment plan when the debtor is able to rejoin the economic system as a tax-paying wage earner.

This is an important protection. Typical older tax cases involve debtors who have recently gotten back on their feet and found a job after years of economic or family displacement. The displacement is often the result of serious health or substance abuse problems, unstable employment or a marital collapse. These debtors may have drifted through many jobs over several years without keeping the W-2 or 1099 forms needed to file tax returns. Having finally found steady employment, debtors are often faced with a wage garnishment for these old taxes just at the time they are attempting to get back on level financial ground. The debtors may need to file for bankruptcy to stop the garnishment so that they will have

enough money left from take-home pay to pay rent, child support, or other financial necessities.

But if old taxes cannot be discharged through a chapter 13 plan, as proposed in this bill, debtors will have no reason to try to pay what they can afford to pay through a chapter 13 plan, because they will know that at the end of the 3- to 5-year payment plan, they likely will again face an IRS garnishment for the older taxes.

My amendment addresses this problem. I should also point out that the amendment retains the bill's prohibition on the discharge of taxes for which a fraudulent return was filed. So we are talking about discharging of back taxes that are not the result of fraud, just the result of nonpayment.

The next amendment also deals with chapter 13. It is amendment No. 94, and would correct a serious drafting error in section 102(h) of the bill that threatens to unintentionally eviscerate chapter 13. Refusing to remedy this error would be disastrous for the very chapter of the code that the sponsors of this bill want to encourage people to use.

In chapter 13 cases, debtors must devote all they can afford—that is, their disposable income after living expenses—to payments under their plan. These payments go to administrative expenses, secured creditors and unsecured creditors. In fact, most chapter 13 cases filed under current law are filed in order to deal with secured debts, to prevent foreclosure on a home or repossession of a car.

As written, section 102(h) of this bill would instead require that for debtors who are below median income, all disposable income must go to unsecured creditors, and none could be used for secured debts or administrative expenses. This is an obvious drafting error, since the purpose of section 102(h), as I understand it, was simply to require debtors with income over the median income to use the IRS standards contained in the means test to determine their allowable living expenses but to leave the law unchanged for debtors below median income.

If this error is not corrected, the bill will make it impossible for debtors below median income to use chapter 13. Now some in this body may be under the mistaken impression that people who file for chapter 13 bankruptcy are well off and they will only choose that chapter if they are forced to by this bill. That is obviously not true since chapter 13 exists now and millions of people use it voluntarily. The large majority of chapter 13 filers are actually below median income. In fact, in the 1980s, one study found that about 15 percent of chapter 13 filers were actually below the poverty line. Very few people file in chapter 13 because they have large amounts they can afford to pay to unsecured creditors. They do it to protect their homes from foreclosure or their cars from repossession. While there certainly are exceptions, people who file for bankruptcy are generally

poor, whether they choose chapter 7 or chapter 13.

Currently, with no means test in place, about 30 percent of bankruptcy debtors voluntarily file under chapter 13. Even the sponsors of this bill claim that only another 8–10 percent of those who now file under chapter 7 would be switched to chapter 13 if the means test were implemented. So even with the means test, the majority of chapter 13 debtors will almost certainly be below median income. That means the drafting error I have discussed is a big deal. We have to fix this problem before it becomes law.

A second problem created by this error has to do with administrative expenses in chapter 13 cases. Administrative expenses in bankruptcy include the fees of lawyers and trustees who are paid to process the case.

Section 102(h) of the bill would effectively impose a 10 percent cap on chapter 13 administrative expenses for debtors with income over the median. And it would prohibit any payments at all for administrative expenses for debtors below the median. What that means is that there will be no lawyers to handle chapter 13 cases at all. Chapter 13 will become a nullity.

This bill has contained a number of antilawyer provisions over the years, but I cannot imagine that the drafters of this bill intended to effectively prohibit attorney participation on behalf of debtors in chapter 13 cases.

My amendment will correct these drafting problems. It makes clear that the means test expense standards will be used for chapter 13 cases filed by debtors who make more than the median income. It makes sure that below median income debtors can pay their secured creditors. And it will allow administrative expenses, including attorneys' fees, to be included in the plan payments. I urge my colleagues to support this amendment if you don't want this bill to write chapter 13 out of existence.

Another of my amendments deals with a provision that bankruptcy lawyers are very concerned about. This is amendment No. 93 on debt relief agencies. The amendment is strongly supported by the American Bar Association. This amendment would exclude lawyers from the provisions dealing with "debt relief agencies" in sections 226 to 228 of the bill. As currently written, the bill would impose a number of unnecessary burdens on the attorney/client relationship in bankruptcy proceedings. Subjecting attorneys to the "debt relief agency" provisions will add little substantive protection for consumers, but require substantial amounts of extra paperwork and cost.

Requiring lawyers to call themselves "debt relief agencies" will do more to confuse the public than to protect it. I think members of the public generally understand what the word "lawyer" means, but the phrase "debt relief agency" is vague and unhelpful. It is also misleading, because there are sig-

nificant differences between lawyers and nonlawyers, but both would be identifying themselves as debt relief agencies under this bill.

Only lawyers are permitted to give legal advice, to file pleadings, or to represent debtors in bankruptcy hearings. Perhaps most importantly, only lawyers are bound to confidentiality by the attorney-client privilege. These distinctions are important to consumers, but they would be obscured by the bill as written.

Furthermore, these provisions would apparently apply to any law firm that provides bankruptcy services, even if that law firm were primarily providing landlord-tenant advice—even to landlords—criminal defense services, or other unrelated services. Large firms with only one bankruptcy practitioner may be required to advertise themselves as "debt relief agencies."

I think this will be immensely confusing to consumers without any apparent benefit.

The substantive provisions on "debt relief agencies" would add little to the already existing laws and regulations governing attorney conduct. Attorneys currently have extensive duties relating to disclosures, fees, and ethical obligations. These provisions would micromanage that relationship without adding any meaningful substantive protection.

I think the intention of the bill's drafters was to prevent attorneys from tricking consumers into bankruptcy by not telling consumers from the beginning that they work on bankruptcy issues, and then sort of springing the idea of bankruptcy on the consumer. But rather than simply prohibiting this sort of unethical behavior, the bill tries to micromanage the attorney-client relationship by requiring large amounts of additional paperwork and disclosure. Extra paperwork substantially burdens the consumer and adds to the cost of bankruptcy. Given that attorney conduct is already regulated, I believe these provisions are unnecessary as applied to attorneys and provide no clear benefit.

As I mentioned, the American Bar Association strongly supports this amendment. The Federal Bar Association is also strongly in favor of it.

Mr. President, I ask unanimous consent that a letter from the Federal Bar Association be printed in the RECORD.

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

FEDERAL BAR ASSOCIATION,  
OFFICE OF THE PRESIDENT,  
Cincinnati, OH, February 28, 2005.

Re Attorney Liability Provisions in S. 256,  
The Bankruptcy Abuse Prevention and  
Consumer Protection Act of 2005.

Hon. ARLEN SPECTER,  
Chairman, Committee on the Judiciary, U.S.  
Senate, Washington, DC.

Hon. PATRICK LEAHY,  
Ranking Minority Member, Committee on the  
Judiciary U.S. Senate, Washington, DC.

DEAR CHAIRMAN SPECTER and SENATOR  
LEAHY: As the Senate prepares to consider  
the "Bankruptcy Abuse Prevention and Con-  
sumer Protection Act of 2005" (S. 256), I

write to express the opposition of the Federal Bar Association to several provisions in the proposed legislation that would in our opinion inappropriately increase the potential liability and administrative burdens of bankruptcy attorneys under the Bankruptcy Code. Those provisions would require attorneys to: certify the accuracy of factual allegations in the debtor's bankruptcy petition and schedules under penalty of court sanctions (section 102); certify the ability of the debtor to make payments under a reaffirmation agreement (section 203(a)); identify and advertise themselves as "debt relief agencies" subject to a variety of regulations (sections 227-229).

The Federal Bar Association, with over 16,000 members throughout the country, is the only national association composed exclusively of attorneys in the private sector and government who practice within or before the federal courts and agencies. Our mission is to serve our nation's federal legal system. In our view, the above-referenced provisions of the proposed legislation pose a serious threat to the efficient operation of the bankruptcy laws and the bankruptcy courts. We are joined in this opinion by many state and national bar associations and bankruptcy practitioners.

The cumulative potential liability and additional administrative burden imposed upon debtor attorneys by the legislation may be expected to generate a substantial negative impact on the availability of quality legal counsel in the bankruptcy system. The above-referenced provisions will discourage many attorneys from agreeing to represent debtors and significantly increase the fees and expenses of clients. The requirement that a bankruptcy attorney certify the accuracy of factual allegations in the debtor's bankruptcy petition and schedules, for example, will essentially require the attorney to become a guarantor of the petitioner's statements. The effect of these draconian changes may be to drive many consumer bankruptcy practitioners out of this area of practice, depriving individuals of adequate legal representation and forcing them to seek less responsible alternatives such as unlicensed bankruptcy petition preparers or to file their petitions themselves. They may not even receive adequate advice regarding the necessity or advisability of filing for bankruptcy. Therefore, the attorney liability and "debt relief agency" provisions contained in the proposed bankruptcy legislation may have an adverse effect on debtors, creditors and the bankruptcy system itself. While these changes may not be intended by the advocates of the legislation, they are foreseeable.

The spirit of the above-referenced provisions can be better satisfied by the imposition of non-dischargeability sanctions upon debtors who falsify their bankruptcy schedules and tougher action by bankruptcy courts and the United States Trustee to enforce Bankruptcy Rule 9011 when misconduct by a party exists. These reforms would reduce bankruptcy fraud and abuse without unfairly harming honest debtors or the bankruptcy system.

We call upon you to support amendments that may be offered on the Senate floor that would remove the inappropriate and unnecessary sanctions and burdens described above from the proposed bankruptcy legislation.

Thank you for considering these views. If you would like more information on the PBA's views, your staff may contact our counsel for government relations, Bruce Moyer, at (301) 270-8115.

Very truly yours,

THOMAS R. SCHUCK,  
National President.

Mr. FEINGOLD. Mr. President, another amendment I have pending is

really concerned with making the bankruptcy system work better for both creditors and debtors. It is amendment No. 90, dealing with notice.

The bill contains three separate notice requirements which seem to create significantly differing procedures for notice.

The first provision requires debtors to send notice to the creditor at whatever preferred address the creditor has specified in correspondence with the debtor shortly before bankruptcy.

The second provision says that debtors and the court must send notice to the creditor at an address the creditor files in each individual case.

And the third provision says the court must send notice to an address the creditor files for all cases, with an exception if a different address is filed for an individual case.

The first requirement, that debtors send notice that bankruptcy has been filed to creditors at the creditors' preferred address, is actually unworkable and unfair and serves no apparent purpose. Debtors often do not receive correspondence within the last 90 days prior to filing for bankruptcy, and even when they do, they may not know that the correspondence is significant. Essentially, debtors might end up having their cars repossessed despite the fact that they filed for bankruptcy and repossession should be prevented by the automatic stay because they threw away what appeared to be junk mail from the creditor. And bankruptcy lawyers are forced to search through their clients' correspondence for an address or a change of address.

I think we can come up with a much more streamlined notice provision that will satisfy the interests of both creditors and debtors.

My amendment will eliminate the first notice provision of the bill and instead establish a central national registry for creditors' correspondence addresses. The registry would be available to debtor's counsel and the court on the Internet, as is already done for government creditors under the Federal Rules of Bankruptcy Procedure. The same address could be used for all notices, except when a creditor files and serves a different address for an individual case.

The bill generally provides for such a registry, and the courts are moving in that direction anyway, but the bill has two significant flaws. First, the bill is vague about whether a registry is to be maintained by each court or in a central national database, and it does not provide that the registry will be made available to the public.

Second, the bill's current language is unworkable because counsel will have to constantly check court records in every case to see if a new address was filed with the court. My amendment requires parties to use any address that has been filed more than 120 days previously with the registry. Within that 4-month period, the addresses should be updated in various software programs

that bankruptcy attorneys use to find addresses, or they can recheck the registry to find if addresses have changed.

The exception to sanctions for a violation of an automatic-stay violation must also be amended so it does not include creditors who have clear actual notice of a stay. As it stands now, the bill creates a loophole that will encourage rampant abuse. For example, a debtor who filed for bankruptcy the previous week might return home from work to find her car being repossessed. The creditor might claim the debtor did not provide proper notice of the bankruptcy because notice was not sent to the correct address and therefore the creditor can proceed with the repossession, even if the debtor has her time-stamped bankruptcy petition in her hand and shows it to the repo man. It would not even work in that circumstance, which is an absurd result.

Finally, the language of the bill should be clarified so that actual notice reasonably calculated to come to the attention of a creditor or its agent is sufficient to allow sanctions for violation of the stay.

Correcting the notice provisions will protect the interest of debtors and creditors. Do we really want to leave in place a provision that is so obviously contradictory and unworkable and that could lead to a result as unjust as the example I just described? I hope not.

I also believe that creditor as well as debtor attorneys will appreciate the streamlined notice provision in my amendment and the establishment of a national registry available on the Internet.

It is my understanding the Administrative Office of the Courts does not favor the current language of the bill because it has essentially been overtaken by events. The courts are moving to electronic filing and notice registries. Keep in mind, this bill started about 8 years ago. An awful lot has happened in that time to make this much more feasible and, frankly, much more helpful to whoever is working on this, whether it be creditor representatives or debtor representatives.

My amendment is consistent with that movement. The bill is not.

One of my amendments is just a clarification of the effect of my bill and should not be controversial at all. It is amendment No. 100 on reaffirmation.

Section 524(1) allows creditors to accept payments made "before and after filing" of a reaffirmation agreement with the court. It also provides that a creditor may accept payments from a debtor under an agreement that the creditor believes in good faith to be effective.

I am concerned that these provisions could allow creditors to accept and retain payments where the reaffirmation agreement is ultimately held to be invalid.

In the late 1990s, in a celebrated case, the retailer Sears was required to disgorge literally hundreds of millions of dollars in payments made by debtors

pursuant to reaffirmation agreements that were invalid because they were never filed with the court. This bill would permit acceptance of payments before a reaffirmation agreement is filed. This will leave an ambiguity that would potentially require courts to allow a creditor such as Sears to retain all those payments.

The current language in section 203 of the bill suggests that if Sears in good faith believes those invalid agreements to be legitimate, it could have retained the payments. This would undermine the integrity of the bankruptcy system, and I can see no policy justification at all for allowing creditors to retain payments made pursuant to invalid reaffirmation agreements.

This amendment would clarify that courts have the option to order the disgorgement of payments made pursuant to invalid reaffirmation agreements or to order other appropriate remedies. Again, it is simply a logical correction to an ambiguity in the bill. If it is not necessary, I would appreciate the sponsors saying so on the record so that the legislative history on this point is clear.

Finally, I hope the sponsors will consider agreeing to amendment No. 87 on inflation adjustments. As a result of the efforts of Senator GRASSLEY and my efforts, one of the provisions in this bill is a long overdue inflation adjustment to the dollar amounts in chapter 12, the chapter covering farm bankruptcies. Those dollar amounts were originally set in 1986. We increase the farm bankruptcy amounts to account for inflation since 1986 and then index them for future inflation.

Inflation has severely limited the usefulness of chapter 12 to family farmers, and I am pleased that this bill addresses that problem as well as others with chapter 12.

Virtually all the dollar amounts in the Bankruptcy Code are now subject to section 104, which provides for their adjustment every 3 years in accordance with the cost of living. But not all of them are. The reason that the family farm amounts needed to be increased so much in this bill is because they were not previously adjustable under section 104.

This bill adds a number of new sections or subsections with dollar amounts that are not indexed, including the family fisherman provision, household goods, educational savings limits, certain venue thresholds, and the applicability in chapter 13 of the additional monthly allowance for individuals over a family of four.

Again, this is just a commonsense technical issue. Almost all of the dollar values in the current bill should be added to section 104 and adjusted for inflation, just as the family farm values are, and the homestead exemption, and many others. I implore my colleagues: Do not make the same mistake that was made with respect to family farms back in the mid-1980s.

Do not set up a situation where 10 or 20 years from now some provision is

clearly too low, but it cannot be fixed for 7 years while Congress works on another big revision to the Code.

I do hope the sponsors can accept this amendment. If there is an amount they have a real argument about that should not be indexed, I am willing to consider that. I removed one provision in this amendment having to do with the definition of financial participant when I heard from the Bond Market Association that that one should not be indexed. So I am willing to be reasonable, and I hope my colleagues who have worked so hard and long on this bill over the past 8 years will be reasonable as well, as this moves to final passage.

I have taken some time in going through these amendments, and perhaps people watching would say: Why is this Senator waiting until the last minute to raise these issues?

Of course, that is not the case at all. I waited patiently in the Judiciary Committee, provided these amendments well in advance in almost every case for everybody to review. I started to offer the amendments in committee and make my arguments. We received no substantive response at all in the committee on almost every amendment.

When one Senator actually could not take it anymore on the other side and offered a substantive response to my amendment, he said, I apologize to the chairman for making an argument, basically because apparently they had been instructed not to talk about these amendments.

He asked: Senator, why are you doing this? We need to get this out of committee. Why do you not wait until the floor to offer these commonsense amendments, and then we in good faith will work together to try to solve these problems?

Well, that is not what is happening. This is just a slam dunk. There is no danger anymore about considering these amendments. They got cloture. There are plenty of votes. What is the harm of fixing the bill? What is the harm of doing the right thing? What is the harm of doing our job as legislators and making sure we do not stick the entire bankruptcy community with these provisions that do not make any sense? Come on, we can do this now. It is safe to go back in the water. This is going to become law, and not a single one of my provisions will do any damage whatsoever to the fundamental intent or goals of this bill.

I do thank my colleagues for their attention in this presentation. These are highly technical issues. Some may seem minor, and some may actually be minor. I do not want to take the Senate's time on these amendments, which is why I attempted to get them considered in committee and have tried to make myself available at every instance to discuss them over the past week and a half.

I look forward to discussions over the next few hours with the managers of

the bill. Perhaps we can still reach agreement that will make some of these votes unnecessary.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. 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. 51

Mr. BINGAMAN. Mr. President, I call up amendment No. 51 to the bankruptcy bill.

The PRESIDING OFFICER. Is there objection?

Without objection the pending amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 51.

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

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

The amendment is as follows:

(Purpose: To amend certain provisions regarding attorney actions on behalf of debtors, and for other purposes)

On page 14, strike line 2 and all that follows through line 4 and insert the following: "tion of a party in interest, may order the".

On page 14, line 7, insert "and reasonable trustee fees based upon the trustee's time in prosecuting the motion," after "fees,".

Beginning on page 14, strike line 10 and all that follows through page 15, line 17, and insert the following:

"(ii) the court grants such motion.

"(B) Any costs and fees awarded under subparagraph (A) shall have the administrative priority described in section 507(a)(2) of this title, and such costs and fees shall be excepted from the discharge described in section 727 of this title in the current or any successor cases filed under this title.

On page 16, strike line 8 and all that follows through line 10 and insert the following: "the".

On page 28, between lines 17 and 18, insert the following:

(1) ADDITIONAL GROUND OF NONDISCHARGEABILITY.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (18) the following:

"(18A) for costs or fees imposed by a bankruptcy court under section 707(b)(4) of this title, whether imposed in the current case or a prior case filed under this title."

On page 28, line 18, strike "(k)" and insert "(m)".

On page 59, strike lines 16 and 17 and insert the following:

"(5) The declaration shall consist of the following certification:

On page 60, strike line 4 and all that follows through line 10.

On page 182, line 4, strike "EXPANSION" and insert "ENFORCEMENT".

On page 182, line 7, insert "fraud and abuse exist in the bankruptcy system and that in order to curb this fraud and abuse, Federal bankruptcy courts should vigorously enforce" after "that".

On page 182, line 8, strike "App.)" and insert "App.)".

On page 182, strike line 9 and all that follows through line 19.

On page 459, lines 24 and 25, strike “, even if such amount has been discharged in a prior case under this title”.

Mr. BINGAMAN. Mr. President, this amendment would help to ensure that legal representation remains affordable and accessible to lower income Americans who are forced into bankruptcy.

As currently written, the bill contains provisions that would significantly increase attorney's fees and expenses related to the filing of a bankruptcy petition. Under existing law, attorneys can rely on information that a client provides regarding the extent and the value of their assets, such as the worth of a car, household furniture, and that sort of item.

In an effort to combat the perceived abuse of the bankruptcy system, this proposed bill requires an attorney to certify that the attorney has made an inquiry into the client's assertions, and it subjects the lawyers to personal liability for inaccuracies in a debtor's list of assets. Although the proponents of this provision may argue that the change will prevent abuse, I believe it is an unnecessary change that will have significant unintended consequences.

Under existing law, attorneys are already required to certify that pleadings, motions, and other materials have factual support pursuant to bankruptcy rule 9011. Attorneys are also prohibited from knowingly making any legal or factual misrepresentation to the court or assisting a client in any abuse. If we want to address misconduct by attorneys, what we need is better enforcement of those existing rules. If we want to address abuse by debtors in submitting their lists of assets, we should seek to hold those individuals responsible. My amendment would do that by making specific debts nondischargeable if the debtor lied about them in their bankruptcy schedule.

With regard to the unintended consequences of these changes, in order to protect themselves from harsh sanctions, attorneys would be forced to conduct a costly investigation into the value and the actual existence of the client's claimed assets. This would not only directly increase the attorney's expenses, it would also likely raise very significantly other costs such as malpractice insurance. The Attorneys' Liability Protections Society, Inc., which is a malpractice carrier that insures 15,000 lawyers in 27 jurisdictions around the country, has estimated that the impact of this provision could result in the immediate increase of insurance premiums for bankruptcy lawyers from 10 to 20 percent.

The bankruptcy bill contains another provision with regard to reaffirmation agreements that will also likely result in higher attorney's fees and costs.

Current law provides that debtors can reaffirm a debt and therefore keep a specific asset, as long as the attorney

certifies the decision to do so is voluntary and will not create undue hardship for the debtor.

As drafted, S. 256 would require attorneys, where there is a presumption of hardship, to certify that debtors would be able to make future payments under the agreement. Attorneys are not accountants and would have to conduct extensive audits of their client's finances in order to determine if that client would be able to afford specific payments. Of course, that would drive up attorneys' fees as well.

These additional costs would negatively impact on the accessibility of legal representation and court administration in two primary ways. First, they would reduce the ability of lawyers to take on pro bono cases and would make these legal services unavailable to many indigent debtors. In my own State, the law clinic at the University of New Mexico Law School has said if the bill passes in its current form, it would likely have to stop doing bankruptcy work for indigent clients due to the additional cost and concerns related to the attorney sanction provision. Second, these costs would place additional administrative burdens on the Nation's courts by increasing the number of individuals who would be representing themselves in the court proceeding due to their inability to afford an attorney. According to the Chief Bankruptcy Judge for the District of New Mexico, cases involving pro se debtors, debtors who are representing themselves, can take up to 10 times as much time to process as cases where debtors are represented by counsel. As such, even a small increase in the number of cases being processed without counsel could create substantial administrative burdens on our bankruptcy courts.

So the amendment I have called up would do three things. First, it would replace the attorney liability language in section 102 of the bill with new language that would impose nondischargeable sanctions on debtors who lie on their bankruptcy schedules. Second, it would urge bankruptcy courts to more vigorously enforce existing rules regarding the sanctioning of attorneys where misconduct has been demonstrated. These changes would properly address abuse in the bankruptcy system by holding debtors responsible for intentional misrepresentations in listing the worth of their assets and holding attorneys responsible if they assist in any such abuse. Last, the amendment would maintain existing law with regard to the certification of reaffirmation agreements by attorneys.

I understand the need to punish attorneys for abuse of the bankruptcy process but there are ways to do this without unnecessarily driving up the cost of legal representation. This, in my view, is an amendment that is reasonable. The American Bar Association has endorsed it. I urge my colleagues to support it as well.

I have talked to various of my colleagues in the Senate. I have watched

the amendments being defeated in the Senate for the last several days. I believe I am correct that every single amendment that has been offered to this bill has been defeated, many of them on pretty much a party-line vote. So it is clear to me that offering this amendment and actually requiring a vote on it will not be productive.

I do believe it is a significant issue. It is an issue that should be addressed before this bill is completed and goes to the President for signature. I hope my colleagues will consider the need to address this issue and make changes in the bill. But, because of the lack of support, at this point I will not ask for a vote on the amendment.

AMENDMENT NO. 51 WITHDRAWN

I ask unanimous consent to withdraw the amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, the business here in the Senate is the bankruptcy bill. I want to talk about an amendment I had offered to this legislation that does not get a vote now as a result of cloture being invoked.

The amendment I offered on behalf of myself and Senator DURBIN was offered on a timely basis and the majority decided they did not want to have a vote on the amendment. So when cloture prevailed—and I voted against cloture—this amendment fell also. As a result of that, I do not intend to vote for the underlying bill. The Senate should have voted on my amendment. It was in order. Admittedly it was non-germane to the underlying bill, but still, under the rules, it was in order for me to offer it.

The amendment was an amendment that would create a special committee to investigate contracting waste, fraud, and abuse in the country of Iraq.

We have had almost no oversight hearings here in the authorizing committees of the Senate on how money is being spent with respect to contracting in Iraq. But we have held some Democratic Policy Committee hearings and have heard from a good many whistleblowers and others about what is happening to American taxpayers' money in the country of Iraq. Let me describe some of the testimony we have heard.

This picture is perhaps the best description. At the last hearing I chaired, this person—his face is not seen in this picture, but this person standing here holding some of this money brought this photograph with him. This is \$2 million. This \$2 million wrapped in Saran wrap in \$100 bills was provided to



a contractor. The contractor was doing business in Iraq with our Government and the Coalition Provisional Authority, which was our Government as well. Our witness, who worked for the Coalition Provisional Authority, said that people were told when they needed to get paid on their contracts: Bring a bag. Just bring the bag and you get loaded with cash.

The witness said he heard there was a vault with billions of dollars in cash. At any rate, on the day this picture was taken a contractor showed up and collected \$2 million in cash in a bag.

Let me describe this contractor, by the way, because there is some legal action with respect to this contractor. I will not use names, but the names were part of the hearing. It was on C-SPAN. This contractor was a firm started by two individuals, formerly in one of the branches of our service, retired, who showed up in Iraq and wanted to be a contractor. They didn't have any money. One of them, I guess, had \$450, according to news reports, and they wanted to go into business. So they proposed to get a contract to provide security at an airport in Iraq.

They got the contract. They got \$2 million in cash delivered to them. That is how they started the business. But their business was not necessarily on the level. A couple of their employees decided to become whistleblowers because they were so sickened by what they saw happening. The whistleblowers allege that this company was taking forklift trucks off the airport property, painting them blue, and then selling them back to the Coalition Provisional Authority—which, by the way, was us: Ambassador Bremer and us, the American taxpayer.

So this company, these two fellows running this company, were taking forklift trucks, sending them off to a warehouse to paint them, and shipping them back and reselling them to us, the American taxpayer.

The people who blew the whistle on this received death threats, they said, and were quite scared. But despite all the obvious problems, this company was given \$100 million in contracts in Iraq.

Listening to the witnesses at our DPC hearings describe what was going on in Iraq, it was unbelievable. There were brand new \$85,000 trucks used by contractors in Iraq. When they get a flat tire, what do they do with the truck? They leave it on the road to be torched; brand new \$85,000 trucks. If something plugs up the fuel pump, they leave it; just abandon it. How about a company that decides to buy hand towels for soldiers ordered by the U.S. Army, small hand towels. The company that gets the contract to do it decided to nearly double the price of the hand towels because they wanted to put their company logo on the hand towels used by American soldiers. Or the company that orders 25 tons—yes, 50,000 pounds—of nails to be sent to Iraq for construction. The nails were the wrong

size. They ordered the wrong size, and 50,000 pounds of nails are sitting on the sands of Iraq paid for by the American taxpayer.

The contractor that gets the contract to put in air conditioning units in buildings in Iraq paid for by the American taxpayer goes to a subcontractor, who goes to another neighborhood crew, and they pass all this money along, and pretty soon what was to have been air conditioners is just a couple of fans in a room, while the American taxpayer pays for air conditioners.

It is unbelievable what is happening with respect to waste, fraud, and abuse, and nobody cares. It is the American taxpayers that are taking a bath.

You can't get oversight hearings in this Senate. Do you know why? Because it would be embarrassing to the administration.

A couple of the contracts I just talked about involve Halliburton. People say when you talk about Halliburton you are going after the Vice President. Not at all. When you talk about Halliburton you are talking after the company that got giant no-bid contracts, and there is no accountability for the way the money is spent. Halliburton was charging the taxpayers for 42,000 meals a day served to U.S. soldiers. The problem is they were only feeding 14,000 soldiers a day. They were overcharging the American taxpayer by 28,000 meals a day.

Where is the accountability? Who cares about that? When is this Congress going to decide it matters?

We passed a nearly \$20 billion reconstruction bill. I didn't support it. I offered the amendment to strip the \$20 billion for reconstruction in Iraq. But the majority voted to authorize that spending. The reason I didn't support the funding was Iraq has the second largest reserves of oil in the world. A soldier told me they were standing in a depression in the sand one day and the soles of their shoes got black from oil. This is a country with the second largest reserves of oil in the world. It could easily securitize future oil that will be pumped from under the sands of Iraq and use that money to reconstruct Iraq. That ought not be the American taxpayers' job.

But this Senate and this Congress crafted legislation which was signed by this President that says we are going to actually send over nearly \$18 billion. Twenty-billion dollars was the request. Senator WYDEN and I got an amendment passed that cut wasteful spending by \$1.8 billion. But there is still over \$18 billion in the spending pipeline, \$15 billion of which has not yet been spent.

I talked to this fellow holding this wad of cash which he was about to put in a bag for the people who have allegedly cheated the American taxpayers. You talk to these folks, and they will tell you that passing around there is like passing an ice cube around. Pass it to three or four hands, and pretty soon you have a lot less. It melts away.

That is what is happening to the American taxpayers' money with respect to reconstruction in Iraq.

These are some of the headlines about Halliburton and those contracts with the Department of Defense: "Uncle Sam Looks into Meal Bills; Halliburton Refunds \$27 million," February 3, 2004. On February 4, 2004, "Halliburton Faces Criminal Investigation; Pentagon Proving Alleged Overcharges for Iraq Fuel."

By the way, the recently retired person in the Pentagon who purchased fuel—it was his job to purchase fuel in the world and deliver it in war zones; he did it for over 30 years—testified that American taxpayers are being overcharged by a dollar a gallon in Iraq. A buck a gallon, adding up to tens of millions of dollars. The American taxpayers got hosed here. Nobody seems to care.

The question is, what do we do about all of that?

In 1941, on the eve of the Second World War, there was a Democratic Senator here in this Chamber. While there was a Democrat in the White House, that Democratic Senator got in a car and drove around the country to military bases and said there is massive waste and abuse going on, and we ought to get to the bottom of it. He convinced the Congress to create a special committee. The Senator was Harry S. Truman, and the committee was eventually called the Truman Committee. They saved an estimated \$15 billion by exposing waste. That was a Democratic Senator with a Democrat in the White House.

But the fact is, you can't get hearings now because we have one party that controls the White House, the House, and the Senate, and nobody wants to embarrass anybody.

It is not my intent to embarrass anybody. It is my intent to provide accountability and get to the bottom of how this money is being spent.

Remember the company that got the money shown in this picture, the one where whistleblowers had their lives threatened? The whistleblowers filed suit under the False Claims Act alleging that this company is defrauding the American taxpayer. But the United States Justice Department decided they would not intervene. Do you want to know why? The United States Justice Department said, Well, if they were defrauding something, it was the Coalition Provisional Authority in Iraq, and the Coalition Provisional Authority is not the same as the United States government. The Justice Department's position, according to an assistant U.S. Attorney, was that defrauding the United States is not the same as defrauding the United States taxpayer. The Coalition Provisional Authority in Iraq was created by an executive order, in a very specific document. To have the U.S. Justice Department take the position that defrauding the Coalition Provisional Authority—

which is us—is not the same as defrauding the American taxpayer is Byzantine.

The question is, why do we not allow a vote on an amendment to create a special committee of the U.S. Senate? This would be a committee with four members selected by the majority party and three members by the minority party, with subpoena power to have the kind of investigation and the kind of oversight that the American taxpayers ought to expect of this Congress. Why don't we have a vote on that?

I offered the amendment on time, and the majority party did not wish to have a vote on it.

Perhaps if we had oversight hearings we would hear more about that which I have already heard, the American taxpayers paying \$45 for cases of what I call "pop" back home, Coca-Cola or Pepsi-Cola, \$45 a case; or renting SUVs for \$7,500 a month; \$2.65 a gallon for fuel delivered in Iraq when the just retired head of the Defense Energy Support Center testified they could have supplied it for half that price; \$18.6 million of U.S. equipment missing that a company was given to manage, and now they can't find it, don't know where it is, and don't know what happened to it.

The question is, does anybody here care? If so, why would we not vote on an amendment to set up the kind of committee I would suggest?

As all of us know, we are rushing headlong to have a vote on bankruptcy. We will have that vote. But there is apparently no interest in trying to get to the bottom of these questions I asked. According to the Inspector General of the Coalition Provisional Authority, there was one Iraqi ministry that had 8,206 guards on the payroll, which was the responsibility of the CPA. The problem is there are only 602 working there; 8,206 were being paid for by the CPA, but only 602 were working. The Coalition Provisional Authority actually had possession of nearly \$9 billion in funds that actually came from Iraqi oil that belonged to the Iraqi people. The inspector general says that money cannot be accounted for. Where did it go? What happened to it? When will someone start caring about those things?

I have asked a lot of questions. We have held hearings in the Democratic Policy Committee on these subjects, because the authorizing committees will not hold hearings on these subjects. I have offered an amendment in the Senate on a timely basis. Because cloture was invoked, the majority party knew they would not require Senators to vote on this amendment to this bill. But obviously, this amendment will come back. I will have the opportunity to offer it again, will offer it again, and we will vote in the Senate, provided there is any appetite at all about what is happening to the American taxpayers' money.

I have previously supported bankruptcy legislation. I had hoped to support it this time. But because I was precluded from getting a vote on an amendment that I offered on a timely

basis, and because of other concerns I have with the bill, I don't intend to vote to advance this legislation. I say to my colleagues, we will vote on this amendment at another time because I will offer it again. We will find a way to force a vote in the Senate on creating a special committee to investigate this waste, fraud, and abuse.

It is unthinkable at a time when we have massive Federal budget deficits, a fiscal policy that is far off track at the same time we have massive trade deficits, the combination of which is well over \$1 trillion a year, that no one seems to care much about waste. If ever I have seen an example of waste, fraud, and abuse that is sickening and disgusting, it is in this area. This Senate owes it to the American people to create a committee to investigate, if the authorizing committees in the Senate will not do their job and hold oversight hearings.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. 68

Mr. KENNEDY. Mr. President, I call up amendment 68.

The PRESIDING OFFICER. The amendment is pending.

Mr. KENNEDY. Mr. President, the most disturbing thing about this supposed bankruptcy reform is the utter lack of fairness and balance in the legislation. It gets tough on working families facing financial hardship due to a health crisis, job loss caused by a plant closing or offshoring of a job, or a military callup to active duty. The laws of bankruptcy are being changed to wrest every last dollar out of these unfortunate families in order to further enrich the credit card companies.

However, the authors of this legislation look the other way when it comes to closing millionaires' loopholes and ending corporate abuse. The legislation fails to address the real crisis in corporate bankruptcy where reorganization plans often benefit the very insiders whose greed and mismanagement brought down the company at the expense of the workers, the retirees, and the creditors, and it fails to address the shocking abuse of millionaires hiding their assets in so-called asset protection trusts, placing them completely beyond the reach of creditors.

This bill also fails to deal effectively with the unlimited homestead exemptions in a few States which allow the rich to hold on to their multimillion-dollar mansions while middle-class families in other States lose their modest homes. We truly cannot allow this bill to pass without closing the millionaires' homestead loophole once and for all. It has become a national embarrassment. Millionaire deadbeats buy a huge mansion in Florida and Texas to shield their wealth from creditors. The harsh rules of bankruptcy being estab-

lished by this bill will trap hard-working middle-class families, but the unlimited homestead exemption will allow rich debtors to escape.

Existing bankruptcy laws allow those in bankruptcy to protect from their creditors certain assets, the nature of which is largely determined by State law. Most States make some allowance for homes or homesteads people live in, but the allowance is a modest one, too modest, in many States, for elderly people with large equity in the homes they have lived in for most of their lives.

However, five States—the most notorious of which are Texas and Florida—have unlimited homestead exemptions. This means debtors in those States can stash away millions, even tens of millions of dollars in the States and leave their creditors with nothing.

S. 256 leaves this gaping loophole wide open. It will allow the real abusers of the bankruptcy system to file for bankruptcy and to still keep their fortunes and properties intact while leaving their creditors with nothing. S. 256 has created some minor exceptions to the homestead exemption, none of which would be applicable in many of the most egregious cases. The bill fails to deal with the problem head on of multimillionaires who abuse bankruptcy by stashing away wealth while they declare bankruptcy.

My amendment caps the amount allowed for the homestead exemption at \$300,000. This is an adequate allowance for most people. The average home in the United States is \$240,000, a great deal higher in many of the regions of the country and lower in some parts of the country. This \$300,000 is an adequate allowance for most people and would end the exploitation of the homestead exemption to hide assets from creditors. It would add some measure of fairness and balance to a bill that sorely needs some fairness and balance.

Some of the most egregious abuses we have currently and that this legislation fails to deal with are the kinds of abuses that we have in the case of Ken Lay, the former chairman of Enron, who owns a \$7 million penthouse condominium. Mr. Lay made over \$200 million from Enron stock and \$19 million in bonuses. Other executives received bonuses as high as \$5 million. Over 5,000 employees lost their jobs, and 20,000 lost an estimated \$1 billion in retirement savings. Now, Ken Lay has been able to put some \$7 million in a penthouse condominium in Houston's exclusive River Oaks neighborhood with 12 rooms covering 12,800 square feet.

We are going to find there have been hard-working men and women who have had health insurance—half of all of the bankruptcies are the result of dramatic health bills. Seventy-five percent of those individuals had health insurance. And, as we have pointed out during the course of this debate, if your family is touched by cancer, you, by definition, are going to have \$35,000 to \$40,000, at a minimum, out-of-pocket expenses. And that, in many situations, is enough to drive a family into bankruptcy.

If you have another serious health need, it will do the same. If you have important needs for children, such as spina bifida, autism, or other kinds of significant and important children's diseases, it will run into tens of thousands of dollars.

What we have seen in our study of these bankruptcies is half of the bankruptcies are caused by these medical disasters. Yet, we are unprepared to give any kind of consideration to these hard-working people who have taken out health insurance to try to provide for their families and, through no fault of their own, have been caught up in these dramatic health care bills. They are struggling and try to avoid bankruptcy and meet their responsibilities. But once they get caught in this net that is included in the bill, they will be punished—and I say “punished”—by the provisions in this bill which are unduly harsh and I believe unduly unfair.

But not Ken Lay. Not Ken Lay. Here it is: He will be out there in his \$7 million penthouse condominium in Houston's River Oaks neighborhood, with 12 rooms and covering 12,800 square feet.

Or Andrew Fastow, the former chief financial officer of Enron, who recently built a large house in River Oaks valued in the millions, his home will not be taken. He will be able to go home every night to that home and be able to live there while we are seeing the homes taken from working families whose only problem was that their family was hit by cancer or another serious illness. We are seeing their homes taken, when we see individuals who have basically violated the trust of their company and of the workers get a free ride in the form of millions of dollars.

You call that fair? You call that fair? All this amendment says is, we will have a uniform standard. We have a uniform standard in this amendment. We are going to have a uniform standard with regard to the equity in the house. We are not going to let these individuals go off and be able to shield all of their income.

We find Jeffrey Skilling, Enron's former president and chief executive officer, lives in a 15-room house in River Oaks valued at over \$4 million.

WorldCom's chief financial officer, Scott Sullivan, who was charged with falsifying the books by more than \$3.8 billion, recently built a 4-acre, \$15 million estate in Boca Raton, FL, with an 18-seat movie theater, art gallery, and lagoon.

You are telling me we are going to protect those individuals in their homes when we have single mothers who cannot get the child support or alimony, through no fault of their own, and they are thrown into bankruptcy and in danger of losing their homes? And the cruelty is the innocent individual, more often the wife, who is not getting the alimony or child support, has a very good chance of losing her home—but not these individuals, not Dennis Kozlowski, the former CEO of

Tyco International, who is said to have used \$19 million from a no-interest loan from his company to pay part of the cost of a \$30 million compound in Boca Raton, FL, called, ironically, Sanctuary. So \$30 million he has been able to put away there.

There are hundreds of thousands of workers who have lost their jobs, lost their savings, lost their health care, lost their pensions—but he is going to be protected by this legislation. Where is the fairness in this legislation when it comes to this issue in terms of homes?

We have a law firm in hock for \$100 million. Former Baseball Commissioner Bowie Kuhn moved to a mansion in Ponte Vedra Beach, FL, and immediately sought protection from the creditors. And the list goes on and on and on.

What is the current situation with regard to the homes and homesteads? Well, if you get caught up with a claim against you, and you live in any of these States—in New Jersey, in Pennsylvania, or Maryland—there is no homestead exemption. Your home, if you have the blessings to have a home, is thrown right in there, sold right off, put right on the market, and out you go.

In the State of Michigan, it is \$3,500 in value. In Kentucky, it is \$5,000 of value; Georgia, \$5,000; South Carolina, \$5,000; Ohio, \$5,000; Alabama, \$5,000; Virginia, \$5,000, plus \$500 per dependent; Tennessee, \$5,000 in value, and \$7,500 with your home if you are a married couple; Indiana, \$7,500; Illinois, \$7,500; Missouri, \$8,000.

But there is no limitation for the Ken Lays, the Jeffrey Skillings, the Dennis Kozlowskis putting aside tens of millions of dollars that is going to be protected.

These families will have that amount of equity that will be protected. You can go into some other States: New York, \$10,000; North Carolina, \$10,000; and Wyoming, \$10,000. And some States go on up to \$75,000—Connecticut. In Montana it is \$100,000. In my State of Massachusetts, it is \$300,000. But there is no limit at all, no dollar limit—some acreage amount—in Texas. In Texas, it is 10 acres in an urban area. It can be in downtown Dallas or downtown Houston. Or it can be 200 acres in a rural area. You are protected. If you have a home on 10 acres, wherever it is in an urban area—or 200 acres in a rural area—you are not touched by this legislation. And that is true in varying degrees for the six States.

So we have to ask ourselves, why treat these six States separately and differently from all of the other States, and particularly where, in the other States, when people fall into bankruptcy, one of the first assets they are going to lose is their home.

So at the appropriate time we will have an opportunity to vote on my amendment. As I say, this amendment closes that homestead loophole but permits, notwithstanding any other

provision, the maximum amount of homestead exemption that may be provided under State law shall be \$300,000.

If you get a judgment against you for \$400,000, they sell your home, but at least that \$300,000 is enough that you may be able to get something, particularly if you are an elderly person living on an income of \$1,200 or \$1,500 a month, you might be able to survive.

But the idea outside of that is that you are effectively taking away the homes and putting them at risk for 44 States and permitting 6 States to effectively circumvent this legislation in a very important way. It is wrong. I hope our colleagues and friends can support our measure.

#### AMENDMENT NO. 70

Mr. President, I would ask that amendment be temporarily set aside, and I call up amendment No. 70.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment No. 70 is already pending.

Mr. KENNEDY. I thank the Chair.

Mr. President, this amendment is designed to protect single mothers and their children, who are forced into bankruptcy because they did not receive the child and spousal support they were entitled to, from the harsh provisions of this bankruptcy bill. Single mothers are 50 percent more likely than married people to go bankrupt and three times more likely than childless people to go bankrupt. That statistic tells a great deal about the reality of why people are in bankruptcy.

The proponents of this bill argue that people file for bankruptcy because they are spendthrifts looking to escape their financial obligations. But this stereotype is terribly wrong. The bankruptcy courts are filled with the cases of hard-working people who were pushed over the financial brink because of a family health crisis, a lost job, or a failure to receive child support. These are the people this bill would turn the screws on, looking to squeeze out a few more dollars for the credit card companies.

The amendment focuses on this last group, on single parents trying to raise their children without the financial support they were supposed to receive from the absent parent. It would exempt from the onerous means test a single parent who failed to receive child support or spousal support that she was entitled to receive pursuant to a valid court order totaling more than 35 percent of her household income within a 12-month period. No wonder such a person ended up in bankruptcy. She was never paid more than a third of the income she expected over an entire year to help raise her children, to provide for their basic needs and well-being. Under those circumstances, she had no choice but to fall back on borrowing to support her family. She was not irresponsible. What she did was unavoidable.

Few people realize the magnitude of this problem. In 2004, \$95 billion in child support—\$95 billion—was uncollected. Failure to receive that child

support put millions of single-parent families in a deep financial hole through no fault of their own, and it is the children who suffer the most in these situations. Why on earth would we want to make things even more difficult for these families? Most single moms have to struggle to make ends meet. They are working in low-wage jobs without good benefits. Over three quarters, 78 percent, of them are concentrated in four typically low-wage occupational categories. When the economy is tough, they are often the first ones let go.

The poverty rate for single moms is nearly 40 percent as compared to 19 percent for single fathers. It is no wonder that single mothers are now more likely to go bankrupt than any other demographic group—more than the elderly, more than divorced men or married couples, more than minorities or people living in poor neighborhoods. Yet this legislation would deny traditional bankruptcy relief to many single-parent families who never received the child support they were owed. Instead, they would have to keep paying those credit card bills for another 5 years. Is that fair? I can't believe that a majority of my Senate colleagues think it is.

I am asking them to extend a little compassion to these single mothers struggling to raise their children.

The following women's and children's organizations continue to oppose this bill: The National Women's Law Center, the National Partnership for Women and Families, National Organization for Women, Parents for Children, YWCA, Business and Professional Women, the Children's Defense Fund, Voices for America's Children. They do so because of the particularly harsh provisions of this bankruptcy bill and the heavy weight it puts upon women generally and most particularly on innocent women who are being denied child support and alimony and because they, through no fault of their own, run into this kind of a financial crisis. This legislation will impose harsh provisions upon them, and they will be treated not just in bankruptcy but they will be treated with the harsh provisions that will effectively put them in indentured servitude for the next 5 years.

The National Women's Law Center, in writing to urge opposition to S. 256, says it is harsh on economically vulnerable women and their families. They point out that the bill would inflict additional hardship on over 1 million economically vulnerable women and families who are affected by the bankruptcy system each year—1 million women, the majority of whose only problem is that their husbands have failed to provide alimony and child support. And we are going to wrap them in with the spendthrifts who run amok with their credit. These are innocent individuals. We are saying that the harsher provisions of this bankruptcy law—that is going to in-

denture these women for 5 years; they can get judgments against them for 5 years—will exist for these families, women forced into bankruptcy because of family breakups, factors which account for 9 out of the 10 filings of women who are owed child and spousal support by men who file for bankruptcy.

It is going to be more difficult for the women to even get the alimony from their husbands who may be in bankruptcy but needing to owe alimony to their wives, because the husbands are going to be subjected to the provisions in this legislation and that is going to make the wife compete with the credit card companies. So that is going to be another burden which these individuals are going to have to face.

I hope we can find some support for this amendment because we are talking about perhaps among the most innocent group of people who will be caught in this. We have talked about single moms. We have talked about the National Guard and Reserve. We have talked about those who have been hit by the medical bankruptcy. All, through really no fault of their own or very little fault of their own, are going to be facing a very harsh future.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. 69

Mr. KENNEDY. Mr. President, next I will address amendment No. 69, which I believe is pending.

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, one of the extraordinary phenomenons we are facing at this time is the outsourcing of American jobs, the movement of American manufacturing jobs out of this country—by and large to the Far East but to other countries—and the growth of what we call “temps”—companies that provide temporary workers. Those temporary workers have few, if any, benefits. So, obviously, when they run into challenging health crises and more limited incomes, they are facing the dangers of bankruptcy.

That is why I am offering this amendment—to ensure that workers who have lost their jobs or who have an illness or injury that prevents them from working are not unfairly thrown into the harsh means test created by this bill. This means test puts additional burdens on the debtors already trying to get their lives and finances back together after a difficult period.

The means test applies to those debtors whose average income for the 6-month period prior to filing bankruptcy is above the median income. Some debtors forced to file for bankruptcy because they lost their jobs are

already exempt because they had no income in the last 6 months, but those who lose their jobs within 6 months before the filing for bankruptcy can be fairly included in the means test based on income they are no longer earning. My amendment would correct this problem. It provides that income from any job in which the debtor is no longer employed and income from any activity in which he can no longer engage due to a medical disability will be excluded from this calculation.

Mr. President, if we look at what has been happening in the economy, particularly to those individuals who are unemployed, many of them have been looking for employment for some period of time. If we look at the numbers of unemployed workers in January 2001, it was 6 million. In February 2005, it is 8 million. We are in a period where those who are unemployed are unemployed for a longer period than at any time in recent history.

This chart shows what happens in recoveries. The recoveries before 1991—the increase in terms of the employment and recoveries beginning in 1991 are here, and our current recovery shows that it is very light in terms of the total number of jobs that are created.

This is one of the important charts, Mr. President. This has 8 million Americans competing for 3.4 million jobs. That is the economic condition for workers in this country: 8 million people are looking for 3.4 million jobs. Obviously, there are going to be many millions of Americans who are not going to be able to get those jobs. When they can't get the jobs, they don't have the unemployment compensation, and they are unable to provide for their families, what happens? They end up in bankruptcy.

We are trying to say that for those individuals—by and large individuals who have lost their jobs because of outsourcing—the best projection is that we are going to lose 3.4 million jobs; 3.4 million jobs are at risk of being shipped overseas. 540,000 jobs in 2004; 830,000 in 2005; 1.7 million in 2010; and 3.4 million in 2015. Basically, when the manufacturing jobs go overseas, individuals lose their income, or if they are able to get some income, it is as a part-time worker with no health coverage. Their income goes down dramatically. What happens to those individuals? They end up in bankruptcy through no fault of their own. These are Americans who want to work.

From 2001, we have seen 2.8 million manufacturing jobs lost; 2.8 million jobs were lost. These are the jobs with good benefits, good wages, the jobs that are the backbone of America. When you take 2.8 million of these jobs out of the market and you have 8 million people chasing 3.4 million jobs, we know there are going to be millions of American workers who are going to find increasing pressure in providing for their families. That is what is happening today.

What we are saying is, if these workers are going to be forced into bankruptcy because they have lost their jobs, they are not going to have to fall into the cruelest part of the bankruptcy. That is all we are saying. We have done this. I have been here when we had our trade adjustment assistance. We said some industries were adversely affected because of imports. We provided some consideration for those workers. We are finding out now that we are losing hundreds of thousands and millions of jobs that are being moved overseas. The result is that many of these individuals are unable to have the kind of income they need, and they are forced into bankruptcy. When they are forced into bankruptcy, we are saying that they don't go into chapter 13; they go in and meet their responsibilities and get a fresh start. They don't go into a chapter 13, which will force them to continue to pay for 5 years.

If you look at this chart, you will see that 49 of the 50 States have lost manufacturing jobs. So this reaches the whole dimension of this legislation because this legislation is national. This particular challenge is national. There is obviously a great deal more focus on this in the industrial heartland, in New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, and many of those States, and even in Massachusetts we have lost 83,000 manufacturing jobs. There are plenty of other jobs, such as in North Carolina where they lost 163,000 jobs.

So we have to ask ourselves, what happens to these individuals? We know what happens to them. We know that if they can get a job, they are going to be paid a good deal less. If they cannot, they will run out of unemployment compensation. We are not providing extended unemployment compensation, and we know that the final catch is that in this economy, the health insurance is up, college tuition is up, housing is up, and gas is up. It is forcing these individuals into bankruptcy.

All we are saying for those individuals who have lost their jobs—jobs that have gone overseas, lost manufacturing jobs—and are unable to get those jobs and are forced into bankruptcy, that they will not have the harshest provisions of bankruptcy directed upon them. We ought to show some consideration to them. These are not spend-thrifts, Mr. President. These are hard-working Americans who, 5 years ago, would not be facing this particular challenge, and now they are. We ought to at least give them some consideration.

Mr. President, I think I have until 2:45.

THE PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. Mr. President, we in the Senate were elected to serve the people. It is our solemn duty to fight for the American people every single day, for the values they share and the priorities they care about most. Above

all else, the American people expect us to stand for fairness, freedom, and opportunity. Those values are the cornerstone of the American dream. We believe that if you live right and work hard, you should be able to care for your family. You should be able to afford a comfortable home in a safe neighborhood. You should be able to put your children through school and in college. You should have time to spend with your family, practice your faith, and contribute to your community.

We also believe that when life throws you an unexpected setback, you can count on your neighbors to pitch in. If you lose your job or you fall seriously ill, we all want to help out. You should be given a second chance to pick yourself up, dust yourself off, work hard, and reclaim the American dream for you and your family. That is the American way. That is the American spirit. That is what our bankruptcy courts should be about: giving average Americans who have lived responsibly a second chance.

This bill before us turns the American dream into the American nightmare. This bankruptcy bill turns its back on our most basic values as Americans. It is not a bill of the people, by the people, or for the people. It is a bill of the credit card companies, written by the credit card companies, and for the credit card companies, and it has no place in America.

This bill is about greed. It is about the most profitable corporations in America—the credit card companies—using the Senate to enhance their profits, even more by shaking down hard-pressed Americans in bankruptcy court. It stacks the deck in favor of the credit card companies and against American families who do everything right but find themselves in bankruptcy because they lose a job, fall ill with cancer, or get divorced.

I am reminded of the words of Leviticus in the 25th chapter. It reads:

If one of your brethren becomes poor, and falls into poverty among you, then you shall help him, like a stranger or sojourner, that he may live with you. Take no usury or interest from him; but fear your God, that your brother may live with you.

You shall not lend him your money for usury, nor lend him your food at a profit.

But this bill ignores those words. It allows the credit card companies that charge outrageous interest rates, exorbitant fees, and force you into bankruptcy to still win back almost every dime in bankruptcy court against Americans who have fallen on hard times. This pillaging of the middle class must come to an end.

Today we will pass a bankruptcy bill that rewards the credit card companies at the expense of average Americans. Last month, we passed a class action bill that makes it harder for average Americans to hold big corporations accountable, and we have a President who wants to give your Social Security away to Wall Street.

Credit card companies, big corporations, Wall Street—when is this President and this Republican Congress finally going to give the American people just 1 minute to debate their issues? When are we going to make their health care more affordable so they do not have to worry every night if one of their children gets sick? When are we going to make college more affordable so parents can proudly send their children to college to build their own futures? When are we going to fight for clean water and clean air so we can raise our families in health? When are we going to compete for good jobs, not by lowering the pay but by raising our skills in the global economy? When are we going to fight for a secure retirement for Americans who have lived responsibly and worked hard all of their lives? When is the Senate finally going to stand up and fight for the American people?

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

THE PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. CLINTON. Mr. President, I rise to encourage my colleagues to support two amendments that seek to provide some protections to families who face the devastation of medical bankruptcy.

I thank Senator KENNEDY for offering these amendments that I am proud to be a cosponsor of. The first would exempt from the means test debtors whose severe medical expenses have caused their financial hardship and forced them to file for bankruptcy, and the second would provide a homestead exemption to medically distressed debtors of \$150,000 in equity in their primary residence.

These amendments are critical and will help ensure that families do not have to declare bankruptcy and lose their homes just because they get sick.

Medical bankruptcy has skyrocketed in recent decades. In 1981, only 8 percent of personal bankruptcy filings were due to a serious medical problem. In contrast, a recent study by researchers from Harvard Law School and Harvard Medical School found that half of personal bankruptcies filed in this country are now due to medical expenses. And what is most astonishing about this is that three-quarters of the medically-bankrupt had health insurance at the onset of their illness.

This means that each year, 2 million families endure the double disaster of illness and bankruptcy. In my State of New York, more than 38,000 of the almost 77,000 personal bankruptcies in 2004 were caused by medical expenses, impacting more than 100,000 New Yorkers.

On average, those bankrupted by medical expenses are middle-class

Americans with children who owned their own homes, held jobs, and have completed some college education. Medical debtors are typical Americans who got sick. Their out-of-pocket costs, starting from the onset of illness, averaged almost \$12,000, and in the year leading up to bankruptcy their out-of-pocket expenses averaged more than \$3,500.

These are families who desperately tried to avoid bankruptcy: more than 20 percent reported going without food; more than 30 percent had a utility shut off, more than 50 percent reported skipping needed doctor visits; and more than 40 percent failed to fill prescriptions in the 2 years leading up to their A bankruptcy filing.

The Harvard study also found that those driven into bankruptcy by medical expenses differ in an important way from other filers: they were more likely to have experienced a lapse in health coverage leading up to their bankruptcy filing. In fact, a lapse in health coverage at some point in the 2 years before filing was a strong predictor of bankruptcy, with almost 40 percent of medical debtors experiencing a lapse in coverage, compared to 27 percent of other filers.

For those bankrupt by medical costs, illness caused financial hardship not just because of medical expenses, but also because the illness forced them to work less or lose their employment entirely. In fact, 35 percent had to work less because of illness, and in many cases to care for someone else. And it is likely reduced work and even the loss of a job because of medical problems that resulted in a lapse in healthcare coverage.

It's easy to see how the face of medical bankruptcy is the typical American worker. An unexpected illness or accident leaves you unable to work or unable to maintain your job full-time, which in turn leaves you with less income to pay your medical expenses. Over time your access to care is diminished because you can't afford the cost-sharing, are not seeking needed care to avoid expenses, or have lost coverage because of reduced work hours or job loss, and ultimately your health insurance coverage lapses. Now you have no assistance with medical expenses and little or no income to pay the bills. It's a vicious cycle. And all because you or a member of your family got sick.

Unfortunately, rapidly rising health care costs will only exacerbate this problem going forward. The number of Americans spending more than a quarter of their income on medical costs climbed from 11.6 million in 2000 to 14.3 million in 2004. And the pressure on employers to reduce benefits and increase cost-sharing as a result of rising health costs is no less.

The solution to this problem is not to punish hard working men and women who on a different day, with different luck, wouldn't be just a typical American who got sick. These Americans are already confronting difficulties be-

cause of circumstances beyond their control. Let's not make their situations even worse. We need to adopt these amendments and begin the hard work of addressing the causes of medical bankruptcy and the serious problems that face this nation's health care system.

Again, I thank Senator KENNEDY for his work on these amendments and urge their adoption.

#### AMENDMENT NO. 67

Mr. DODD. Mr. President, this amendment was going to be voted on, actually, earlier this morning, but there was a reason to delay it until this afternoon. I ask unanimous consent to have 1 minute to explain the amendment.

The PRESIDING OFFICER. Under the previous order, the question will be on amendment No. 67, offered by the Senator from Connecticut, Mr. DODD. Without objection, the Senator will be recognized for 1 minute.

Mr. DODD. Mr. President, this amendment is simple and straightforward. More than 1 million women in the coming year will file bankruptcy. The overwhelming majority of these women are mothers of young children. This amendment is designed to see to it that the needs of children will be met as persons go through the bankruptcy act. The credit card companies certainly have a right to receive what resources are due them, but they should not be able to trump the needs of children.

Too often in this bill, in a variety of places, that is exactly what happens. My colleague from Utah said this bill has been 8 years in the making. It would only take a couple of minutes here to try to redress some of the inequities that exist when it comes to questions of providing for the basic needs of children—educational needs, utilizing child support, the earned-income tax credit, the child tax credit, and alimony to support the needs of children.

For over 100 years, since 1903, women and children have come first in our Nation's bankruptcy laws. This will be the very first time, without this amendment being adopted, that children and families will take a backseat to the credit card industry. That is a wrong priority for our Nation.

Every major child advocacy group in this country supports this amendment. I urge my colleagues to support it. This is one exception we ought to make to get right the balance in this bill of the needs of the credit card companies with the needs of America's children and families. I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 67, offered by the Senator from Connecticut, Mr. DODD, on which the yeas and nays have been ordered. The clerk will call the roll.

The assistant journal clerk called the roll.

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

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 34 Leg.]

#### YEAS—42

Akaka	Feingold	Lincoln
Baucus	Feinstein	Mikulski
Bayh	Harkin	Murray
Bingaman	Inouye	Nelson (FL)
Boxer	Jeffords	Obama
Byrd	Johnson	Pryor
Cantwell	Kennedy	Reed
Clinton	Kerry	Reid
Conrad	Kohl	Rockefeller
Corzine	Landrieu	Salazar
Dayton	Lautenberg	Sarbanes
Dodd	Leahy	Schumer
Dorgan	Levin	Stabenow
Durbin	Lieberman	Wyden

#### NAYS—58

Alexander	DeMint	McConnell
Allard	DeWine	Murkowski
Allen	Dole	Nelson (NE)
Bennett	Domenici	Roberts
Biden	Ensign	Santorum
Bond	Enzi	Sessions
Brownback	Frist	Shelby
Bunning	Graham	Smith
Burns	Grassley	Snowe
Burr	Gregg	Specter
Carper	Hagel	Stevens
Chafee	Hatch	Sununu
Chambliss	Hutchison	Talent
Coburn	Inhofe	Thomas
Cochran	Isakson	Thune
Coleman	Kyl	Vitter
Collins	Lott	Voinovich
Cornyn	Lugar	Warner
Craig	Martinez	
Crapo	McCain	

The amendment (No. 67) was rejected.

#### AMENDMENT NO. 68

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, do we have an minute on each side?

The PRESIDING OFFICER. Further time requires unanimous consent.

Mr. KENNEDY. I ask unanimous consent for a minute on each side.

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

Mr. KENNEDY. First of all, I want to pay tribute to my friend and colleague, Senator KOHL, who has worked on this issue for many, many years. This amendment closes one of the gaping loopholes in this bill, but it is a loophole millions of dollars wide and millions of dollars deep.

Right now, because a few States have no limit on homestead, the Ken Lays, the Jeff Schillings, and the Dennis Kozlowskis in this world can hide millions of dollars or tens of millions of dollars of their assets from their creditors even after they go into bankruptcy. There isn't much fairness or balance in the bill so far, but this amendment will put a very small measure of balance in the bill by limiting the homestead exemption nationwide to \$300,000.

I ask my colleagues to vote for balance and fairness, and agree to this amendment.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, this bill is all about fairness and balance. This bill, as I introduced it minus the



Schumer amendment, is exactly the bill that Democratic leaders of the Judiciary Committee signed off on in the summer of 2002 when they controlled the U.S. Senate. I don't know how much more compromise you can get than that. But this amendment would gut one of the major compromises of this legislation that has evolved over that period of time going back to August 2002.

The bill's homestead compromise that we have would create a Federal cap of \$125,000 on the homestead exemption, but would allow those States with higher or unlimited exemptions to take advantage of them as long as they comply with the 2-year residency requirements and a 10-year fraud reachback provision.

The bill's compromise is a good one that all parties have signed off on. The Kennedy amendment would gut it.

I ask you to kill this amendment.

I 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 amendment, and the clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 47, nays 53, as follows:

[Rollcall Vote No. 35 Leg.]

#### YEAS—47

Akaka	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Obama
Boxer	Harkin	Pryor
Byrd	Inouye	Reed
Cantwell	Jeffords	Reid
Carper	Johnson	Rockefeller
Chafee	Kennedy	Salazar
Clinton	Kerry	Sarbanes
Collins	Kohl	Schumer
Conrad	Landrieu	Snowe
Corzine	Lautenberg	Specter
Dayton	Leahy	Stabenow
DeWine	Levin	Wyden
Dodd	Lieberman	

#### NAYS—53

Alexander	Dole	McConnell
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (FL)
Baucus	Enzi	Nelson (NE)
Bennett	Frist	Roberts
Bond	Graham	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Burr	Hatch	Stevens
Chambliss	Hutchison	Sununu
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Coleman	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	

The amendment (No. 68) was rejected.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, this bankruptcy reform bill before the Senate, S. 256, is a 500-page bill, which has been the dream of the credit card industry, banks, and financial institutions across America for almost 10 years. What they are trying to do in this bill is make it more difficult for someone to have their debts discharged in bankruptcy.

Now, of course, everyone understands our legal and moral obligation to pay our debts. But we recognized a long time ago that some people get into a situation where they are swamped with debt and cannot get out from under it. In the old days, they were relegated to debtors' prisons; they literally imprisoned them. In more civilized times, the decision was made to have a civil court procedure, where you could go in and have your debts released, surrendering virtually all of your assets to start over. That is happening in America today. About 1.3 million Americans go into bankruptcy court for personal bankruptcies.

The credit card industry and the banks say too many people are getting their debts discharged. So we are going to set up a new process in the bankruptcy court where we are going to ask more questions than ever and try to determine whether the person filing for bankruptcy could conceivably pay back, over the next 10 years, \$165 a month. And if they can pay back \$165 a month, we will not discharge their debts. They will end up walking out of court with the same debt they carried in, in most cases.

Now, for a lot of people, you would say, if you can pay back something, you ought to pay it back. But for many people, it means the debts they have incurred that they cannot pay back will be dogging them and burdening them for the rest of their natural lives. So many of us have said when you take a look at this bill, at least be sensitive to some people who go into bankruptcy court through no fault of their own.

Senator KENNEDY talked about people with medical bills, because of a medical crisis in their family. A woman goes to the doctor with a lump on her breast, and a mammogram shows it is breast cancer. She goes through extensive radiation, chemotherapy, all sorts of recovery time; she cannot go back to work, and the bills mount up sky high and complications ensue. That is nothing that she has done wrong. There is no moral failure there. If her health insurance is not good, she is left in a position where she can never, ever pay back the bills. That is not a person who should be put through a more rigorous procedure in a bankruptcy court.

Senator KENNEDY said that if you don't do anything else for that poor

woman and her family, at least say at the end of the bankruptcy court hearing she will still have a home, a roof over her head. So we asked for a \$150,000 homestead exemption so that a person could at least have a modest home to return to after bankruptcy from a medical illness. That amendment was rejected. Everybody on the other side of the aisle voted against it.

I offered an amendment and said, what about the men and women in uniform today, the Guard and Reserve who are being activated. They joined thinking: once a year I may have to serve my State, my country for a month or so. Now we are calling them into battle for a year, a year and a half, and no end is in sight.

What if you were a member of the Guard? You have sworn to protect this Nation. You are called into combat and leave behind your family and your business. And what if the business fails because you are gone? What if you are forced into bankruptcy? Could we not at least include language in this bill to give special consideration to the men and women in uniform who are answering their Nation's call and may face bankruptcy? I lost that amendment 58 to 38. Not a single Republican would vote in favor of that amendment.

The last amendment I am going to offer, much to the relief of my Republican colleagues, is one which asks my friends on the other side to take one last look at this issue. Instead of applying that special treatment or giving some help to all soldiers, guardsmen, and reservists who serve and may lose a business or go into family bankruptcy because they are overseas for America, I ask my colleagues on the other side of the aisle to consider this: How about disabled veterans whose indebtedness occurred primarily while they were serving America?

I have met some of these veterans at Walter Reed Hospital. They have lost limbs. They face terrible injuries. If they face a bankruptcy that occurred because of debts that happened while they were in service to our country, should we not give these disabled veterans a fighting chance in bankruptcy court? Should we not spare them the hurdles, obstacles, paperwork, and legal bills that the credit card industry is demanding for people who go to bankruptcy court? This exemption will especially help recently disabled veterans who, in addition to their physical loss, have terrible financial difficulties.

The bankruptcy bill makes petitions for debt relief under chapter 7 subject to a means test. I had a chart before. It is a long chart. Not only do you have to file all the documents to go into bankruptcy court, but this new 500-page bill lays it on you again and makes you file another ton of documents to see if maybe you could pay back \$150 or \$175 a month over the next 10 years.

So I am giving relief to disabled veterans. I am not going to apologize for that. A lot of us get up on the floor and praise them for what they have done.

We should. For goodness' sake, they are protecting us, our families, and our homes. Is it too much to ask that we give them a break in this harsh bankruptcy bill from the worst part?

The amendment specifies the exemption applies only if "the debtor is a disabled veteran and the indebtedness occurred primarily" while they were on active duty. To qualify for this exemption, a disabled veteran must have incurred most of their indebtedness—more than 50 percent of their indebtedness—while on duty.

The Disabled Veterans of America estimates there are 2.3 million disabled veterans. According to the Department of Veterans Affairs' annual report, the average disabled veteran receives only \$7,861 in disability compensation each year. That is not a lot on which to live. Sadly, this amount varies widely. Veterans in some States do much better than veterans in others. Unfortunately, my home State falls into the "others." We receive less than half on average of disability payments paid in other States.

In considering whether to support this amendment, I invite my colleagues to reflect for a moment on the physical and financial situations some of our disabled veterans face. Their hardships today, combined with their earlier service, make them twice heroes, in my book. If any group of people deserves some relief from this burdensome process, it is America's disabled veterans who suffered physical and financial devastation while they were wearing a military uniform and risking their lives for America.

I invite all my colleagues from both sides of the aisle to join me in cosponsoring this amendment and make this rather small but I think deeply worthwhile adjustment to the bankruptcy bill.

It is my understanding that Senator LEAHY will be coming to the floor momentarily, unless Senator GRASSLEY seeks recognition at this point.

THE PRESIDING OFFICER (Mr. COBURN). The Senator from Iowa.

MR. GRASSLEY. Mr. President, this would be a good opportunity for us to consider the general environment and the reason for this legislation.

First of all, there has not been any major rewrite of the bankruptcy legislation for more than 25 years. During that period of time, there has been a dramatic change in the economy, particularly the globalization of the economy. It has brought about reasons for changing parts of the Bankruptcy Code.

We have gone from around 300,000 bankruptcies a year to a high of 1.6 million or 1.7 million bankruptcies a year. So there has been an explosion of bankruptcies. Even in the best of times there has been an explosion of bankruptcies. It has become an economic problem where the average person in America is paying an additional \$550 for goods and services because somebody else did not pay their bills.

All of these things have brought about reasons for changing the Bankruptcy Code. This legislation that is 500 pages that has been referred to is not something that just has been dropped on the Congress of the United States.

First of all, at least 10 years ago, the Judiciary Committee set up a commission of experts in bankruptcy, not made up of Members of Congress, a commission of people from the private sector and from academia to study what needed to be done with the bankruptcy laws to bring them up to date with the global economy, to bring them up to date with the changes in our domestic economy, and to look at the problem of so many people filing for bankruptcy.

This commission worked several months—more than a year—to produce a product. That was the basis for the introduction of legislation in 1997. In that period of time, this bill has passed the Senate in several different Congresses and has passed the House in several different Congresses, has been worked out in conference, an agreement between the House and Senate in several different Congresses, one of those even reaching President Clinton for his signature. But it was the end of the year, and he pocket-vetoed it. We did not have a chance to reconsider that veto.

The legislation before us, as I have introduced it, and basically the legislation that is before the Senate is legislation that has been so compromised, except for the Schumer amendment—and I will not go into what the Schumer amendment is—but except for that amendment, the bill we introduced and maybe four or five technical changes that were accepted in the Judiciary Committee is the legislation that was signed off on by Democrats who had a majority in the conference committee in the year 2002 when the Democrats controlled the Senate.

Is that exactly the way that I would write this legislation? No, it is not. There are a lot of provisions in this bill I would like to be different. But in the Congress of the United States as a whole—and particularly in the Senate where there is no limit on debate, where filibusters are possible, where the minority has rights they should have, and the only place minority rights are protected—you have to reach compromises.

I know no better compromise that I could put before the Senate than the wording of a compromise that was worked out between a Republican House and a Democratic-controlled Senate in the year 2002. That is what we have before us.

There are probably a lot of people who do not want any bankruptcy reform, but they will probably end up voting for it because this bill in different Congresses has passed by a margin of 97 to 1 on one occasion. The last time it passed the Senate, I think the vote was 85 to 12.

I think all of this is evidence of a bipartisan agreement that the bankruptcy laws need to be reformed. I do not know what more evidence I can give the American people of the way our political system works, the way the Congress works, to arrive at compromise, than the compromise that I lay before the Senate.

We recently heard from my good friend, the Senator from Illinois, the Democratic whip, that there have been many opportunities to help this group of people or that group of people or another group of people. We refer to that sort of helping this group or that group or another group as a carve-out.

My colleagues have seen amendment after amendment that was introduced to do that. We defeated that, because there ought to be uniformity of application of law across the United States, not separating something special for this group or that group or another group when it comes to justice in the bankruptcy courts. And if we added all of that up, we might not have a lot of people left who are going to be affected by what a bankruptcy judge is supposed to decide, which is justice between creditors and debtors.

In this legislation, we preserve one of the main goals of bankruptcy for the last 100 or more years, and that is the principle of a fresh start, where somebody is going to bankruptcy because they have problems that they cannot deal with, financial problems, natural disaster, divorce, medical, whatever it takes to get into financial trouble, that might not be any fault of one's own.

To make it clear that we are not after people who do not have an opportunity—when people are below the median income of their State, they are practically guaranteed a fresh start under this legislation, and if people are above the median income for their State, there is a simple process called a means test, where one puts down all of their income and assets and what they owe and through that makes a determination of whether they have the ability to repay some of their debt.

My friend from Illinois mentioned the figure of \$150 or \$175 that maybe over the next 10 years one would have to pay. If people have the ability to repay some of their debt, should they not have to repay some of their debt? It seems to me to be fair to those people to whom they do pay their debt.

So we preserve the principle of a fresh start, but we also establish a principle that if one has the ability to repay some their debt, they are not going to get off scot-free.

It is just not those two principles that ought to be looked at to understand whether Congress might be doing the right thing. I am not saying just an overwhelming vote in support of legislation is the only way that one ought to judge whether that legislation is justified, but surely the extent to which things are more bipartisan in the way they are done in this body

ought to be some justification that certain tests of justice and fairness are being done or they would not get that kind of support, because I do not know a single Senator who for the most part is not concerned about doing right for the people of his State.

So that is the sort of consideration I hope the people of this country will give to this legislation, the need for it, the justification for it, the fairness of it, and most importantly those two principles of a fresh start for those who deserve it and the principle that if one has the ability to repay some of their debt that they are not going to get off scot-free.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 83

Mr. LEAHY. Mr. President, am I correct that amendment No. 83 is pending?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Mr. President, I ask unanimous consent that Senator WARNER, the senior Senator from Virginia, be added as a cosponsor to amendment No. 83.

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

Mr. LEAHY. Mr. President, I am joined by friends and colleagues, the senior Senator from Maryland, Mr. SARBANES, and the senior Senator from Virginia, Mr. WARNER, in offering a bipartisan amendment that will moderately preserve the current conflict-of-interest standards for investment banks. We are doing this to safeguard the integrity of the bankruptcy process.

Section 414 of the underlying bill would severely weaken the disinterested persons rule. That was an important conflict-of-interest standard. It has actually been part of the Bankruptcy Code since 1938. It has been there before I was born. We believe that the standard embodied in current law is critical to protecting the interests of investors and the public.

So our bipartisan amendment is a modest compromise. It limits the conflict-of-interest prohibition, not a total exclusion but just 5 years prior to the filing of the bankruptcy petition. In other words, a prohibition which has been the bankruptcy law forever would now be cut back just to apply in the 5 years immediately preceding the bankruptcy. I think it is a reasonable compromise.

The current disinterested persons standards are intended to ensure that professionals who advise a company in bankruptcy have no conflicts of interest, are neutral, and when we consider how huge some of these bankruptcy have been, Enron and others, we want somebody without a conflict of interest; we want somebody who can be neutral.

Since bankruptcy proceedings involve reexamining prior transactions, an investment bank that underwrote those prior transactions could not be expected to act as a neutral, disin-

terested party. It is almost like saying, I wrote these transactions when you went into this multimillion or multi-billion-dollar bankruptcy but do not worry, I will now be the disinterested party to advise you where we go now.

I think the reason we have the current standard, the reason it has worked well for nearly 7 decades, is because it has helped maintain public confidence in the bankruptcy system.

Section 414 of the bill before us eliminates the current conflict-of-interest standard. It is a standard that prohibits investment banks that have had a close financial relationship with the debtor from playing a major role in the bankruptcy process.

I have talked to a lot of people who are far more knowledgeable on this than I, and they tell me you cannot expect that an investment bank that served as an underwriter of a bankrupt company's securities would then provide an independent assessment of that underwriting as an adviser in the bankruptcy of the company. In other words, you want to find somebody who can give you an independent, neutral assessment in bankruptcy of the underwriting. You don't go to the person who did the underwriting. Of course, they are going to say: Great job. Man, that person did a great job, whoever it was—oh, that was me? Boy, I did a great job.

The investors, especially in these huge bankruptcies, the pensioners who have suffered financial damage through the bankruptcy, deserve neutrality. They don't deserve somebody where it looks as if it is such a cozy deal there is no way they are going to recover.

If the bill is passed in its current form, the investment banks that advised or underwrote securities for companies such as Enron or WorldCom prior to bankruptcy, having advised or underwritten those securities, could then be hired to represent the interests of the defrauded creditors during the bankruptcy proceeding. Just think of this. The people who were involved in putting the creditors and the investors and the people whose pension money was in there, the people who were involved putting all their money at risk, can now be hired to represent their interest.

There is a blatant conflict of interest and that is why it has been forbidden for seven decades. Firms that had a part in those companies could then end up staying on the payroll in bankruptcy and they could make huge profits, sometimes from their own fraud.

What kind of message are we sending to those everyday Americans who invested for their kids' college or their own pensions, who suffered as a result of corporate misdeeds, if we then say that is OK, now we are going to give a whole lot of money to the people who set this mistake up in the first place?

We talked to the National Bankruptcy Review Commission. They strongly recommended that Congress keep the current conflict-of-interest

standards in place. Actually, in their report they concluded:

Strict disinterestedness standards are necessary because of the unique pressures inherent in the bankruptcy process.

These are the people who understand this better than anybody in this Chamber.

Supporters of the underlying bill have voiced their opposition to the inclusion of section 414. I wish they would listen to what a member of the Fifth Circuit Court of Appeals said, Judge Edith Jones. She is a member of the commission. She asked us to remove section 414. She said:

If professionals who have previously been associated with the debtor continue to work for the debtor during a bankruptcy case, they will often be subject to conflicting loyalties that undermine their foremost fiduciary duty to the creditors. . . .

Section 414, in removing investment bankers from a rigorous standard of disinterestedness, is out of character with the rest of this important legislation and . . . it should be eliminated.

Again, if you have a bankruptcy of a WorldCom, an Enron, something like that, and you have all these people with the pension money in it, the kids' college funds in there, their business in there, their own retirement in there, you cannot then turn around and say we are going to let the same people decide what happens to you in bankruptcy as the people who did the things that put us into bankruptcy in the first place.

William Donaldson is the Chairman of the Securities and Exchange Commission. He wrote to us to express the opposition of the SEC to section 414 of the bill. He said:

[We] believe that it would be a mistake to eliminate the exclusion in a similar one-size-fits-all manner at a time when investor confidence is fragile.

Keep that in mind. It does something further. Not only do we end up hurting the people who have to rely on the bankruptcy court being honestly run, but he also wants to keep up investor confidence. He was joined in that position by his predecessor Arthur Levitt, and by a number of nationally renowned experts. National consumer organizations have written to us to warn of the danger of weakening conflict-of-interest controls, as this bill would allow:

If the participants in Enron's earlier financial dealings had managed the investigation, it is quite legitimate to wonder how many of these financial misdeeds would have come to light in the first place. Without existing conflict-of-interest prohibitions in place, it is possible that some of the same firms that have come under investigation by the SEC for illegal activities in the current corporate scandals might very well have been allowed to serve as "objective" advisers in this and other bankruptcy proceedings.

I ask unanimous consent a letter from the Consumer Federation of America, the Consumers Union, Consumer Action, U.S. Public Interest Research Group, and the National Consumer Law Center be printed in the RECORD.

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

MARCH 3, 2005.

Hon. PATRICK J. LEAHY

*Ranking Member, Senate Judiciary Committee, Washington, DC.*

Hon. PAUL S. SARBANES

*Ranking Member, Senate Banking, Housing and Urban Affairs Committee, Washington, DC.*

DEAR SENATORS LEAHY AND SARBANES: The undersigned national consumer organizations strongly support your amendment to strike a little noticed provision of pending bankruptcy legislation (S. 256) that would weaken current conflict-of-interest standards in the bankruptcy code. This provision would, for the first time, allow investment bankers to offer advice in bankruptcy restructuring cases about companies with which they have had a close financial relationship prior to bankruptcy. As advocates for small investors, we applaud you for moving to eliminate this significant threat to the interests of investors, employees and pensioners.

Section 414 of pending bankruptcy legislation would loosen the current standard for "disinterested" parties that are allowed to advise bankruptcy management or trustees as they attempt to restructure debtor companies in a manner that is fair to investors and other creditors. Of the several parties that are automatically banned from offering advice because of obvious conflicts of interest, Section 414 removes only one: investment banking firms. This means that the same firms that underwrote and sold stocks and bonds for a bankrupt company—firms that in some cases may have participated in structured finance deals with the company or otherwise played a significant role in financial decisions that helped to land the company in bankruptcy—could now be allowed to offer restructuring advice to the management or trustee responsible for maintaining impartiality and representing the interests of creditors.

Corporate bankruptcy experts tell us that reexamining the financial transactions that led to bankruptcy is one of the most significant responsibilities of the post-bankruptcy management (often called debtor-in-possession, or DIP, charged with the duties of a trustee to protect all creditors and investors.) This review includes determining what role, if any, that outside advisers and financial partners played in bringing about a company's downfall. Another of DIP management's most important responsibilities is determining the best source of financing for any restructuring. An investment banking firm has obvious conflicts in both roles and is very unlikely to be an advocate for review of its own previous work or the deals in which it participated. It is quite possible, for example, that an investment banker would discourage bankruptcy management or trustees from pursuing legal claims against the banking firm for illegal activities of that firm that contributed to the bankruptcy. The landmark settlement with the leading investment banks over their stock research practices shows just how poorly these firms have handled comparable conflicts in the past.

Imagine how the public would have reacted if the investment banks that were later found to have profited enormously from structured finance deals with Enron had been hired to offer advice in the Enron bankruptcy. Indeed, if the participants in Enron's earlier financial dealings had managed the investigation, it is quite legitimate to wonder how many of these financial misdeeds would have come to light in the first place. Without existing conflict-of-interest prohibitions in place, it is possible that some of the

same firms that have come under investigation by the SEC for illegal activities in the current corporate scandals might very well have been allowed to serve as "objective" advisors in this and other bankruptcy proceedings. This scenario is possible because, as you know, it often takes months or longer to unravel the role of investment banking firms in such cases, particularly cases that do not receive the media and congressional scrutiny of an Enron or Worldcom collapse.

In response to these conflict-of-interest concerns, investment banking interests offer a familiar refrain. We can offer better advice, they say, because we are intimately aware of the distressed company's financial situation. This response is eerily similar to that offered by the accounting industry, as it loudly insisted that a conflict did not exist when accountants served as both internal and external auditors or received lucrative consulting contracts from the same companies that they audited. But, if there is one lesson we should have learned from the recent corporate crime wave, it is that conflicts of interest matter. Investors paid dearly to learn that lesson. And the markets have paid through the loss of investor confidence.

Representatives of the securities industry have also contended that this provision will merely provide bankruptcy officials with the discretion to make a judgment about whether a particular investment firm should be involved in a bankruptcy case. But what if the details of an investment firm's involvement with a bankrupt firm do not come to light for months or longer, as was true in the Enron case? By that time, a lot of damage could already have been done to investor interests, and the credibility of the process would have been hopelessly undermined.

For example, the Wall Street Journal reported on May 14, 2003 that investment firm UBS Warburg, "was far more involved in the inner workings of HealthSouth than previously disclosed and maintained an unusually close relationship with HealthSouth's embattled founder, Richard Scrushy." Yet, if Section 414 of the bankruptcy bill had been law, it is entirely possible that UBS Warburg could have been allowed to serve as "objective" advisors in the HealthSouth bankruptcy case.

Congress and the SEC have devoted considerable time and energy over the past few years to eliminating just these kind of conflicts in an effort to restore investor confidence. The SEC has made important strides, for example, in implementing the Sarbanes-Oxley corporate reform law and in cracking down on Wall Street conflicts of interest. More recently, the National Association of Securities Dealers (NASD) has been considering whether to place new limits on investment banking firms' ability to write fairness opinions for deals in which they are involved, since these firms could benefit financially if a merger or acquisition is approved. By allowing new financial conflicts, section 414 of S.256 runs completely contrary to this trend.

Investment firms that have previously advised a bankrupt company have a prima facie conflict of interest and should continue to be automatically prohibited from offering advice in a bankruptcy restructuring case. We commend you for moving to eliminate the conflicts-of-interest that this bill would allow.

Sincerely,

BARBARA ROPER,  
*Director of Investor Protection, Consumer Federation of America.*

TRAVIS B. PLUNKETT,

*Legislative Director, Consumer Federation of America.*

SUSANNA MONTEZEMOLO,  
*Policy Analyst, Consumers Union.*

LINDA SHERRY,  
*Editorial Director, Consumer Action.*

EDMUND MIERZWINSKI,  
*Consumer Program Director, U.S. Public Interest Research Group.*

JOHN RAO,  
*Staff Attorney, National Consumer Law Center.*

Mr. LEAHY. This is not the time to weaken conflict-of-interest standards. If we are doing anything, we ought to be strengthening conflict-of-interest standards. The provisions Senators SARBANES and WARNER and I seek to modify are fundamentally at odds with the work of the Congress and the SEC, fundamentally at odds with the work to restore public confidence in financial and corporate transactions. I thank them for offering this with me.

All we want to do is to make sure we increase the confidence and accountability in our public markets for millions of Americans whose economic security is threatened by corporate greed and not have the Senate put an imprimatur on the use of people with enormous conflicts of interest, especially when consumers are hurting so badly.

I see the senior Senator from Maryland. He is far more familiar with how these things have worked in these major corporations. He is the author of the Sarbanes-Oxley bill. I yield the floor to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I thank the very able Senator from Vermont, the ranking member of the Judiciary Committee. I am pleased to join with him in offering an amendment to the Bankruptcy Act. This amendment addresses a provision in the bill that would drastically weaken the conflict-of-interest protections of the Bankruptcy Code in regard to investment banks.

Section 414 of this bill makes sweeping changes in the conflict-of-interest requirements of the bankruptcy process in regard to investment banks. These changes are opposed by the Securities and Exchange Commission, by such legal experts as Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, Dean Nancy Rapoport of the University of Houston Law Center. They were rejected by the National Bankruptcy Review Commission of 1997.

In my view, section 414, if allowed to stay in the legislation as it is now written, would significantly raise the risk of abuse and therefore I think it is imperative that we undertake to modify the provision in the legislation. I am pleased to join with my colleague in seeking to do so.

I ask unanimous consent to have printed in the RECORD the entire letter

from Chairman Donaldson, writing on behalf of the Securities and Exchange Commission to Senator LEAHY and myself in response to our letter asking for the views of the Commission.

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

SECURITIES AND EXCHANGE

COMMISSION,

Washington, DC, May 22, 2003.

Hon. PATRICK J. LEAHY,  
U.S. Senate,  
Russell Senate Office Building,  
Washington, DC.

Hon. PAUL S. SARBANES,  
U.S. Senate,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATORS LEAHY AND SARBANES: Thank you for requesting the Commission's views on Section 414 of H.R. 975, which would amend the "disinterested person" definition in the conflict of interest standards of the Bankruptcy Code to remove the specific provisions covering investment bankers. On May 7, in response to a question from Senator Sarbanes at a hearing of the Senate Committee on Banking Housing and Urban Affairs on the Impact of the Global Settlement, I expressed my personal views about this amendment. Now I am pleased to convey the view of the Commission, which is that, while it may be possible to draft language that would address some of the concerns of the proponents of the amendment, Congress should proceed very cautiously before loosening any conflicts of interest restriction. While we recognize that this one-size-fits-all statutory exclusion is controversial, we believe that it would be a mistake to eliminate the exclusion in a similar one-size-fits-all manner at a time when investor confidence is fragile.

The current "disinterested person" requirement was adopted at least in part in response to a 1938 study by the Securities and Exchange Commission that provided extensive documentation and analysis of abuses in corporate reorganizations. The study concluded that a firm that served as underwriter for a company's securities should not advise the company about distributions to those security holders in a reorganization plan. It further found that such a firm should not advise the company about potential claims against those involved with the company prior to the bankruptcy, since this often would involve an assessment of transactions in which the firm participated. However, we should note that in the 65 years since the 1938 study was issued, bankruptcy practices and procedures have improved significantly with the addition of a dedicated bankruptcy judicial system, the establishment of the U.S. Trustee's office, and the strengthening of active creditors' committees.

We are aware of the arguments of proponents of the amendment that the current statutory exclusion is too broad because it covers firms that participated in any underwriting of the debtor, even if it was years ago and the firm has had no further involvement with the debtor. However, if the exclusion is eliminated entirely, we are concerned that the general protection in the statute—which relies on the judge, at the outset of the proceedings, to forbid those with materially adverse interests to the estate, its creditors, or its equity security holders from advising a company in bankruptcy—may well be insufficient.

We appreciate the opportunity to comment on this proposed amendment. If you or your

staff need any further information, please contact my office.

Sincerely,

WILLIAM H. DONALDSON,  
Chairman.

Mr. SARBANES. The Chairman writes:

Now I am pleased to convey the view of the Commission, which is that, while it may be possible to draft language that would address some of the concerns of the proponents of the amendment, Congress should proceed very cautiously before loosening any conflict of interest restriction.

Chairman Donaldson, of course, noted the fragility of investor confidence and the need to be very careful in easing these conflict-of-interest provisions.

The existing provision in the law:

... was adopted at least in part in response to a 1938 study by the Securities and Exchange Commission that provided extensive documentation and analysis of abuses in corporate reorganizations.

The study concluded that a firm that served as underwriter for a company's securities should not advise the company about distributions to those security holders in a reorganization plan. It further found that such a firm should not advise the company about potential claims against those involved with the company prior to the bankruptcy, since this often would involve an assessment of transactions in which the firm participated.

We have strengthened, of course, bankruptcy practices and procedures over the years. We now have a dedicated bankruptcy judicial system, the establishment of a U.S. Trustee's Office, and strengthening of active creditors committees. But, nevertheless, I think we continue to have a very real conflict-of-interest problem here.

My colleague has pointed out the letter of Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, a very distinguished member of the 1997 National Bankruptcy Review Commission. She pointed out that they had been asked to modify the disinterestedness standard in order to accommodate the geographic growth and increasing sophistication of professional firms of all kinds involved in Chapter 11 bankruptcy. She said they rejected that in the Commission by a lopsided majority.

These were expert people on bankruptcy law. It was the wise and prudent way to proceed when we are considering making important changes of this sort. They noted that in order to protect the integrity of the bankruptcy process, it was important to maintain this disinterestedness standard, so you don't have conflicting loyalties that may undermine the fiduciary duties of the creditors.

Furthermore, it was noted—I think this is an important point—that a standard of disinterestedness is necessary to maintain public confidence in the integrity of the bankruptcy system.

We ought not to have a situation in which allegations can be made that the conflict-of-interest situation is preventing a fair, reasoned, and objective

judgment as to what ought to be done, and then they end up imputing hidden motives to the actors in the case.

It has been noted by Dean Rapoport, the Dean of the University of Houston Law Center, that one of the duties of the debtor in a bankruptcy case is to take a good, hard look at the pre-petition behavior of those who dealt with or ran the debtor to see whether that behavior contributed to the downfall of the debtor. Another duty is to see how the debtor can raise new post-petition funds in order to finance an effective reorganization. But those are two very important duties or responsibilities of the debtor in the bankruptcy case. Dean Rapoport goes on to state that both of these duties—taking a good, hard look at the pre-petition behavior of those who dealt with the debtor and also a good, hard look at how the debtor can raise new post-petition funds in order to help finance an effective reorganization—both of these duties would be compromised if the same investment bankers that were involved with the pre-petition debtor were allowed to serve as the "objective, post-petition investment bankers."

Stop and think about that for a moment. Clearly, it highlights a potential conflict of a very significant dimension.

There is an argument made that the bankruptcy court would still have to review this and could make a factual finding that there was not disinterestedness present. But she noted, and I quote, "the current standard saves the bankruptcy court from having to make time-consuming, factual findings regarding the disinterestedness of those categories which by their very nature are rife with conflicts of interest. Removing investment bankers from the exclusion list will increase the time, cost and attorneys fees for every bankruptcy case without increasing the benefits to the estate as a whole."

The final report of the National Bankruptcy Review Commission pointed out the strict disinterestedness standards are necessary because of the unique pressures in the bankruptcy process. The trustee and his professionals are required to act as a fiduciary to the estate, its creditors, and other parties in interest, and the court. The disinterestedness standard is designed to ensure that all issues relevant to the administration of the estate are properly raised and vented before the court. Therefore, we are trying to avoid a situation in which there could be a perception or an allegation of favoritism to favor one party over another, the charge that they are taking it easy on one group or group of creditors, or to refuse to pursue possible claims or avenues of inquiries because of any indirect or direct pressures.

The proponents of the provision that is in the legislation which we are seeking to modify by this amendment argue

we should simply give the discretion to the bankruptcy judge to allow investment banks to serve as advisers even if those banks underwrote securities with companies that subsequently filed for bankruptcy, leaving it to him to make a determination in that regard.

The SEC in its letter to us on that point said:

If the exclusion is eliminated entirely—

Which is what this legislation does—

we are concerned that the general protection in the statute which relies on the judge, at the outset of the proceedings, to forbid those with materially adverse interests to the estate, its creditors, or its equity security holders from advising a company in bankruptcy—may well be insufficient.

Dean Rapoport of the University of Houston Law Center pointed out that the current disinterestedness standard saves the bankruptcy court from having to make time-consuming, factual findings regarding the disinterestedness of those categories which by their very nature are rife with conflicts of interest. Removing investment bankers from the exclusion list will increase the time, cost and attorney fees for every bankruptcy case without increasing the benefits to the estate as a whole.

The amendment seeks to address one of the arguments that has been raised by the proponents of section 414, which is that the current per se prohibition on investment banks that have underwritten securities of a company in bankruptcy remains in effect as long as those securities remain outstanding, no matter how many years ago it may have taken place. It may well have been many years prior to the bankruptcy and the investment bank involved might no longer have a close connection to the bankrupt company.

Senator LEAHY and I have modified the original amendment which we planned to offer which would simply go back to the current law prohibition, and instead in this amendment we are offering a prohibition on investment banks that have underwritten securities of a company within 5 years prior to the filing of the bankruptcy petition.

Mr. LEAHY. If the Senator will yield for a question without losing his right to the floor, I ask the Senator from Maryland, if the bill was passed in its current form, could investment banks that advised or underwrote securities for companies such as Enron or WorldCom that filed bankruptcy, which ended up defrauding investors, could they then be hired to represent the interests of the same defrauded creditors during the bankruptcy proceeding?

The way the bill is now written, without our amendment, could they then be hired to represent the interests of the defrauded creditors?

Mr. SARBANES. I was going to say that is absurd, but as far reaching as that sounds, the answer to the question is yes. That is one of the reasons the

potential that results from this legislation is so far reaching.

Gretchen Morgenson, on April 6, 2003, had an article in the New York Times headlined "Advisers May Get Second Chance To Fail." She starts the article as follows:

Do you think Salomon Smith Barney, the brokerage firm that bankrolled WorldCom and advised it on a business and financial strategy that failed rather spectacularly, should be allowed to represent the interests of the company's employees, bondholders and other creditors while WorldCom is in bankruptcy?

She goes on to say:

If you answered no, you win a gold star for common sense and for knowing right from wrong.

We are just trying to get a "no" answer put into section 414 of this bill.

We have tried to make a reasonable and balanced modification that essentially preserves the basic conflict of interest protection but does allow this greater flexibility for investment banks that have not recently underwritten securities for the company to serve as advisers in the bankruptcy. But to simply remove the existing provision in the law altogether is to open up the possibility for abuses of major dimensions. Therefore, I very strongly support the amendment being sponsored by Senator LEAHY and by Senator WARNER.

There is no public purpose that will be served by allowing section 414 to remain in this legislation as it is currently written. In fact, to the contrary, it runs very counter to important public purposes.

Other articles of note include one by Alan Sloan in the Washington Post: "Proposed Changes In Bankruptcy Law Twist Meaning Of 'Reform' Beyond Recognition." He goes on to point out the potential implications of this change.

There is also an article by Michael Krauss in the Washington Times headlined, "Bankruptcy Reform . . . With a Thorn." He goes on to say that he supports bankruptcy reform legislation but does not support section 414 of the bill because it removes from the excluded list of people not allowed to be employed in the bankruptcy the investment bankers who have had a connection with the company.

The amendment before the Senate is a reasoned and balanced proposal. We have tried to listen to the arguments being made on the other side and respond to those that we think have some merit to them without completely doing away with the "disinterestedness" standard. You have to have confidence in the integrity of the bankruptcy system. The total elimination of the investment bankers in terms of being precluded because they have a conflict of interest situation is not going to bolster consumer and creditor confidence.

I urge my colleagues to support this amendment. It is a fair and balanced amendment. It is badly needed. To fail

to enact it will carry with it a tremendous risk in terms of how our bankruptcy process functions.

The PRESIDING OFFICER. The chairman of the committee, the Senator from Pennsylvania, is recognized.

Mr. SPECTER. I have secured the agreement of the managers to speak very briefly about another matter. It involves the Coal Act, which has provided benefit for many miners in Pennsylvania and throughout the country.

The Coal Act of 1992 mandated coal operators to fulfill their promise to provide their employees and families with health benefits, and those obligations could not be modified. As an original cosponsor of this legislation, along with the Senators from West Virginia, Senator ROCKEFELLER, and Senator BYRD, I am very closely aware of the effect on 14,000 retired coal miners and their dependents in Pennsylvania. Nationally, this act affects over 60,000 individuals, including every State except for Hawaii. These health benefits form a central underpinning for the medical care structure of the coalfield community.

It is a tough job being a coal miner. I have, in the course of my representation of the coal miners, gone 30-stories-deep underground, ridden in a cable car, crunched over like a corkscrew to avoid being hit by the ceiling as the cars moved in on the long wall to perform the mining operation.

The issue came forcefully home to me when I visited several hundred of the coal miners in Washington County, PA, more than a decade ago along with Richard Trumka, distinguished Pennsylvanian who had been president of the United Mine Workers and is now secretary-treasurer of the AFL-CIO. We went to court to verify this program, which is vital for the health care of these miners.

I was very surprised to see a Federal judge enter an order which said that the bankruptcy proceeding in a case captioned Horizon Natural Resources trumped the Coal Act. It is a surprise to me that that would happen under the existing law.

I know we are operating under a unanimous consent agreement where there has been a series of amendments set aside and we are in postclosure. Senator ROCKEFELLER earlier made comments about this amendment and was unable to secure agreement. In working through this bankruptcy bill we are laboring under a great many complications, a complication that if there are amendments unacceptable to the House, there will be a conference, and a conference resulted in the defeat of this bankruptcy bill several years ago.

This amendment is technically precluded at this time, but I wanted to take the floor. And I have discussed it with the distinguished chairing officer, Senator GRASSLEY, the principal proponent of the bankruptcy bill. In my capacity as chairman of the Judiciary Committee, I yielded to him because he



is the principal author. We have talked about it.

I understand we are not going to be able to get this amendment through at this time for technical reasons, but I wanted the 14,000 Pennsylvania coal miners and the 60,000 coal miners nationally to know of the concern of Senator ROCKEFELLER, Senator BYRD, and others. I have not had a chance to catch Senator SANTORUM on the floor, but he has been very solicitous and very concerned about coal miners' interests. But until I speak to him specifically, I would make only the generalized comment about his concern for the coal miners.

So what I intend to do at this time, recognizing there will be a successful objection, is to send this amendment to the desk and offer this amendment to the pending bill.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendments?

Mr. GRASSLEY. Mr. President, reserving the right to object, and I will object, but I would like to take just 30 seconds to explain that there are problems with the Coal Act. They are within the jurisdiction of the Senate Finance Committee, and we ought to look at all these issues in the context of a comprehensive review and a comprehensive solution.

So I would see a piecemeal approach, as is being done now through the bankruptcy bill, as, first of all, intervening in the jurisdiction of the Finance Committee, which as chairman I should protect, and, secondly, making more difficult the comprehensive solutions that we ought to find. So I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SPECTER. Mr. President, first, I thank my colleague from Iowa, with whom I have served since January 3, 1981. We came to the Senate at the same time, the sole survivors of 16 Republican Senators. I appreciate what he has said about taking a look at it.

I will be filing legislation to correct this, and I will be looking forward to the opportunity for a hearing in the Finance Committee. And I think other Senators will be joining me as well.

I understand the reasons we cannot have it in now, but let the 60,000 coal miners nationwide take heart, and the 14,000 Pennsylvania coal miners, that this is an issue which we will pursue and I think prevail on. We will ultimately win this, although not today.

Again, I thank my colleagues for letting me intervene.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 83

Mr. CRAPO. Mr. President, I stand to speak in opposition to the pending amendment. The pending amendment has been discussed as if it were seeking to stop investment banking interests who are involved in working with companies that face bankruptcy from continuing some kind of fraud or inappropriate

conduct that helped to lead to the bankruptcy by prohibiting them from serving as investment bankers or investment advisers following the bankruptcy proceedings or during the pendency of the bankruptcy proceedings.

The fact is, however, section 414 of the bankruptcy bill and of the bankruptcy law does not eliminate the disinterested test for investment banks. Let me explain the way the law works at this point.

For whatever reason, when our current bankruptcy laws were put into place, a complete bar was put in place, so when a company goes into bankruptcy, its investment bankers cannot then function on behalf of the company. They cannot be appointed by the judge to continue to work as the company that works out its bankruptcy difficulties, whether it be in some kind of an ongoing bankruptcy proceeding or in a chapter 7 proceeding. Therefore, the disinterested test simply never applied because there was never any opportunity for an investment bank to serve in this role if it had had any relationship whatsoever to the company going into bankruptcy.

That posed a couple very serious problems. The first one is that investment banks that have no current relationship with the company and are possibly best suited to help them through their financial difficulties are conflicted due to having some minor role in the underwriting or some underwriting relating to the company years and years ago. That is under current law. What this bankruptcy reform we are trying to put through is seeking to do is to address that problem.

Similarly, investment banks that are most familiar with the issues facing a distressed company and are actually working with that company in an attempt to avoid bankruptcy are then compelled to walk away from their clients in their biggest hour of need if bankruptcy becomes necessary and the company has to make the bankruptcy filings. That is what this legislation that is being proposed is seeking to address.

The amendment would strike that and, instead of having a perpetual ban, would have a 5-year ban. Now, admittedly, the 5-year ban would solve one problem because it would make it so a company that 20, 30, 40, 50 years ago was involved in an underwriting would not be disqualified, but it still leaves disqualified all of the investment banks that may have been involved even in a bundled underwriting or in some effort to help this company in its financial dealings over the last 5 years prior to bankruptcy. It eliminates those investment banks, their expertise, and their knowledge of the failing company, from consideration in helping that company as it seeks to work through a bankruptcy.

Let me make it very clear: The proposed change in the statute does not

eliminate the disinterested test. In other words, a question was posed a moment ago on the floor as to whether, in the case of Enron, an investment bank that had been involved in an underwriting for Enron could then have been appointed by the court, under the change in the law proposed here, to continue working with Enron after it went into bankruptcy proceedings. And the answer that was given on the floor was, yes, that is a possibility.

Well, first of all, the question assumes that any investment bank that had been involved with Enron was somehow involved in fraud because Enron was involved in fraud. We do not necessarily know that. But that gets to the point of what the bill we are proposing is seeking to do.

The bill maintains current bankruptcy law requirements that if an investment bank is to be appointed by the court to work with the bankrupt company, the court must make a determination that this investment bank is disinterested, that it passes the disinterested test. I would presume that if there were a participant in fraud, the court would not consider that to pass the disinterested test.

But the key point here is that what the proposal in the underlying bill seeks to accomplish is to have a judge take evidence, evaluate the issue, and make the determination of which investment bank is the best suited, passing a disinterested test, to help this company as it seeks to work through the bankruptcy issues. And there will be many cases when the best suited financial advisers are those who have a history of working with the company, of knowing the company's business, and of knowing the company's financial dealings, and being able to work with them.

In fact, in many cases, I would assume it might be a financial adviser, an investment bank that has been working with the company for the last 3 or 4 years to help them try to work through their problems, and for some reason, with what I consider to be a cookie-cutter solution being proposed by this amendment, they would be disqualified simply because they tried to help or were hired to help beforehand.

In fact, what we see here in this amendment is a chilling impact on companies going out and seeking investment bank advice before bankruptcy, if they know that bankruptcy is a possible outcome they may face, because they have a choice: Do we seek the best competent investment banking advice we can get before the bankruptcy, knowing that the bankruptcy law will prohibit us from ever having that advice if we do end up having to file or do they say: "We may have to file and, therefore, we will seek less competent advice or our second alternative so we can have our first alternative when we file bankruptcy"? Why put companies into that kind of a complex problem?

Section 414 would subject investment banks to the same disinterested test as

other professionals. This is important to know. A company's legal advisers are not subjected to an automatic ban; they are subjected to a disinterested test. A company's accounting advisers are not subjected to an automatic ban; they are subjected to a disinterested test. And yet the effort here seems to say that for some reason we do not want to let the investment bank advisers be subjected to the same disinterested test. Instead, we want to presume that they are guilty of some inappropriate conduct because the company has not financially made it, and ban them from being able to work with the company once a bankruptcy filing takes place.

It is another one of those one-size-fits-all cookie cutter solutions that is coming from Washington, DC that is telling every bankruptcy judge across the country that they have no alternative in terms of their choice of who can be the investment bank advisers and supporters for a company that goes into bankruptcy, if there is any connection in the last 5 years between that investment bank and the company that had to file.

Bankruptcy courts currently review disinterestedness for all professionals, and 414 would allow judges the same discretion with investment banks as they have for attorneys and accountants. The current law has created a market, frankly, in which a small club of restructuring boutiques dominates the market for restructuring services in bankruptcy. In other words, they realize that if they even get close to a company before bankruptcy, then they won't be able to serve as a part of the restructuring effort for that company coming out of bankruptcy. So this sort of boutique business has developed where the only alternatives the judge has to turn to are those companies that specifically don't help until after the bankruptcy filing.

That is the issue we need to address. Do we want to create a system of investment bank advice for companies that are facing financial difficulties in which those companies have to make a choice as to who they will contact for support before the bankruptcy filing, knowing that whoever they choose to help them in their investment banking will be automatically prohibited from helping them if they do end up having to go into a bankruptcy?

Professionals are required to perform a firmwide review and disclose all actual and potential conflicts in their application to the court to be retained by the debtor. All parties in interest, including debtholders and shareholders, have the opportunity to make their position known before the judge.

Another important point is, somewhere in the debate that has been going on today, we heard: The judge may not know; the judge may make a mistake; the judge may not be aware of all the facts; it is going to be very expensive for the judge to have to go through and look at these investment

banks to be sure that he knows whether they are culpable or whether they are simply competent investment advisors.

The fact is, the costs that are being put onto the system now by these blanket bans on investment banks are generating more costs to the restructuring process than any cost that could be generated by having the judge make a disinterested analysis. But even if the judge somehow made a mistake, even if we want to hypothesize that judges are going to make mistakes and bad actors might be allowed to be an investment bank adviser or participant in a bankruptcy, any time information becomes available to make it evident that the disinterested test was not satisfied, the judge can change that ruling and terminate the professional's engagement.

It seems to me what we need to do in our bankruptcy laws is to promote more flexibility. We need to give opportunities for all investment banks to participate with those companies in our economy, whether they be strong or facing financial difficulties, and help them to the maximum of their abilities. And if it turns out some of those companies end up having to make a bankruptcy filing, then it is important that we protect the flexibility for the bankruptcy judge to select the most qualified investment bank support to work out that bankruptcy circumstance.

That is what is in the best interest of our shareholders, in the best interest of our economy, and in the best interest of the debtor and the creditors. We must make certain that we don't allow one more very rigid Federal standard to continue to create this kind of difficulty in the bankruptcy process.

Two other points. First, all Senators have received a copy of this letter. There is a letter that was sent out which was signed by those in the industry who are involved in this, who very strongly indicate that the reform and the flexibility this bankruptcy proposal promotes should be supported. That includes the American Bankers Association, the Bond Market Association, the Financial Services Roundtable, the Futures Industry Association, and the Securities Industry Association.

Frankly, although I know Chairman Donaldson has been quoted here, I am not aware that the SEC itself has ever taken a position on this issue. If that is the case, I stand corrected.

Mr. SARBANES. Will the Senator yield on that?

Mr. CRAPO. I will yield.

Mr. SARBANES. The letter we submitted reflected the opinion of the commission. Chairman Donaldson had indicated a personal view in a hearing, and then I sent a letter asking him for the commission's view.

Mr. CRAPO. And he responded on behalf of the commission?

Mr. SARBANES. It begins: "Thank you for requesting the Commission's views on section 414 of H.R. 975."

Mr. CRAPO. I stand corrected on that.

Mr. SARBANES. In response to a question from me, he expressed his personal views. He writes:

Now I am pleased to convey the view of the Commission . . .

Mr. CRAPO. Reclaiming my time, I stand corrected on that.

This will not be the first time, even in recent months, that I have disagreed with the SEC. Although I understand that your letter does speak for the SEC, the fact is, there is one other point I want to make. That is, as is the case with a number of the amendments we have dealt with in debate over the bankruptcy bill, which we have been trying to move forward for 8-plus years, we face a situation in which we are trying to keep this bankruptcy bill clean and not have amendments that are objectionable to the House included in it so that we again run into the problem of not being able to move the legislation. This is one of those amendments. I am confident and I have an understanding that this is one of the amendments the House would not allow and would cause us to then have to go into conference and bring down the bill.

The bottom line is, it is bad policy. We have bad policy in current law. The bill seeks to create the flexibility that will allow a judicial determination as to the best and most highly qualified and disinterested investment bank advice for companies involved in bankruptcy. We should not change the underlying bill by substituting a rigid 5-year ban prohibiting many companies that are in the best position possible to do the best good for the company that needs their help at this point from being able to serve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I want to take a moment to respond to the Senator from Idaho. I think this is important.

Elizabeth Warren, who is a distinguished professor at Harvard Law School and an expert on bankruptcy, has said there is a reason why the professionals who have worked for a business that collapses in a bankruptcy are not permitted to stay on. The company must go back after bankruptcy and re-examine its old transactions. Having the same professionals review their own work is not likely to yield the most searching inquiry.

She goes on to say about the provision in the bill: It is not a provision to ensure investor confidence or to enhance protection for employees, pensioners, or creditors of failing companies.

Let me make one other point which needs to be understood. To the extent an investment bank—and it needs to be understood that an investment bank has been viewed as integrally related to the financial arrangements of the company, similar to creditors, security holders, and insiders—advised on the creation of a company's capital structure before a bankruptcy filing, it may itself be exposed to potential liability. As it works out the deal that permits the company to emerge from bankruptcy, it may be tempted to prefer the creditors who have a potential claim against the investment bank.

Now, that is the very sort of conflict that we simply ought not to permit. We address one point made by the Senator about a connection a long time ago that is no longer relevant in the 5-year provision, and the amendment takes care of that.

Beyond that, I think we would be making a grave mistake to allow this radical change to take place. I very much hope my colleagues will support the amendment offered by Senator LEAHY, Senator WARNER, and myself.

I yield the floor.

Mr. LEAHY. Mr. President, we have had a good debate. I mentioned to the Senator from Iowa, I don't know if other people wish to speak, but I am perfectly willing to go ahead and have a vote. I know the leadership is trying to move things along and get things going. I am willing to have a vote.

Mr. GRASSLEY. I would like to speak for a short time.

Mr. President, under current law, investment banks are not allowed to compete on the same playing field as other professionals. Right now, investment banks are precluded per se, in many circumstances, from representing a debtor in a business bankruptcy if the investment bank acted as the investment banker for the company before it filed for court protection.

I think this is a draconian rule. The bill would give the bankruptcy judge the ability to determine whether an investment banker is disinterested, just as the judge determines whether other professionals are disinterested. The provision in the bill, it seems to me, is not only fair, but it will also safeguard the proceedings from any conflict of interest. Do we trust our Federal judges, or don't we, to make this determination? After all, the environment for this is in the judiciary—before judges. We happen to trust them for all other professionals involved in the bankruptcy proceedings, whether there is any conflict of interest for anyone involved. So then the question becomes, why should it be different for investment banks?

I think the provision in the bill is fine as it is. It is part of the compromise. We should allow a judge to make this determination and, thus, protect the integrity of the bankruptcy process. So I ask my colleagues to oppose this amendment.

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

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

Mr. LEAHY. Mr. President, since we have the list of cosponsors of the pending amendment, I ask unanimous consent that the Senator from Virginia, Mr. WARNER, be removed as a cosponsor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. 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. BIDEN. Mr. President, I checked with the majority staff and they have no objection to my seeking to be recognized for up to 10 minutes as in morning business.

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

#### INDICTMENT OF RAMUSH HARADINAJ

Mr. BIDEN. Mr. President, yesterday the International Criminal Tribunal for the former Yugoslavia at the Hague, known by the acronym ICTY, indicted a fellow that I met several years ago, a guy who was very much involved in the carnage that took place at the time of the war in Kosovo. His name is Ramush Haradinaj. This is a young man who looks like he could lift an ox out of a ditch. A very hard, tough guy.

Until yesterday he happened to be the Prime Minister of Kosovo. He was indicted for war crimes in Kosovo during the period of 1998 and 1999. Mr. Haradinaj declared himself entirely innocent but resigned as Prime Minister, surrendered voluntarily, and flew to the Netherlands today to turn himself in. He also did something highly unusual in the Balkans. He issued a statement calling for calm in Kosovo.

From the creation of the Hague Tribunal a decade ago, I have supported its vitally important work. Beginning with Judge Goldstone, my staff and I have met with its chief prosecutors over the past decade. I have great respect for Carla Del Ponte, the current chief prosecutor and for the court's judges.

I am confident that Haradinaj will receive a fair trial. Without presuming to pass judgment on his innocence or guilt, though, I would like to comment—this is the first time I have ever done this—on my personal impressions of him and also to put his arrest in a larger context relating to the entire territory of the former Yugoslavia.

Let me begin with my meeting with him in Pristina in January of 2001. We discussed Kosovo's future, and he seemed genuinely to recognize that the only way forward was for the rights of the Kosovo Serbs, and of other non-Albanian minorities to be guaranteed. During that trip, I flew by helicopter to western Kosovo where I visited the Serbian Orthodox Visoki Decani Monastery, a 14th century architectural masterpiece which last year was named a UNESCO World Heritage site.

During the fighting in 1999, the Serbian Orthodox monks of this monastery had saved Kosovar Albanians from persecution by Serb forces. Again, these were Serbian Orthodox monks saving Kosovar Albanians most of them Muslims—from persecution by Serb forces.

Nevertheless, when I visited the Visoki Decani Monastery nearly 2 years later, Father Sava and other monks told me that they were in great danger. In fact, Italian KFOR armored personnel carriers were lined up in the snow just outside the monastery's stone walls as a deterrent.

Knowing that the territory around Decani is Mr. Haradinaj's political base, I sent him a confidential letter after I returned to Washington. In it I wrote that I was counting on him to personally guarantee and protect the Serbian Orthodox monastery I had just visited.

In March of 2004, serious riots against Serbs and other non-Albanian minorities broke out across Kosovo. Hundreds of homes were destroyed, and many medieval Serbian Orthodox churches and monasteries were burned to the ground. KFOR proved unable or unwilling to prevent this destruction. In fact, in several cases, the outrages occurred while European KFOR troops stood by. One of the few venerable monasteries that remained untouched was Visoki Decani. Mr. Haradinaj had kept his promise.

During the 1998–1999 war, Haradinaj was a leading commander of the Kosovo Liberation Army, the KLA. Hence, his election as Prime Minister last year was greeted with considerable skepticism. From all reports, however, in his brief tenure, he has earned nearly unanimous praise, including from the head of the U.N. mission in Kosovo, for his constructive and effective leadership. I am told that even Serbian leaders in Belgrade privately acknowledge that of all of the Kosovar political leaders, it is Haradinaj with whom they could potentially negotiate with the greatest degree of confidence.

Mr. Haradinaj's call for calm, which so far has been heeded, was based upon a realization that a repeat of the violence of March 2004 would deal a fatal blow to the Kosovars' hope that the process toward negotiations on the final status of Kosovo can begin later this year.

I have said repeatedly that self-determination by the people of Kosovo is ultimately the only realistic solution to

the problem. Since more than 90 percent of the population is ethnic Albanian, as is Mr. Haradinaj, with a collective memory of extreme persecution by the Serbian government of Slobodan Milosevic, I can't imagine they would ever vote for a return to being governed by Belgrade.

On the other hand, I have coupled my advocacy of self-determination for Kosovo with the precondition that the personal safety and freedom of movement of all Kosovo Serbs, Roma, Ashkali, Egyptians, Turks, Bosniaks, Gorani, and other non-Albanian minorities are being provided and are guaranteed for the future. As yet, unfortunately, this has not occurred. Mr. Haradinaj's statesman-like actions are intended to keep Kosovo on the path toward Final Status negotiations.

In the overall post-Yugoslav context, Mr. Haradinaj's willingness after his indictment to surrender voluntarily and go to The Hague is striking. It stands in glaring contrast to the behavior of the three most infamous individuals indicted by The Hague, all of whom are still fugitives, resisting arrest: former Bosnian Serb General Ratko Mladic, former Bosnian Serb leader Radovan Karadzic, and former Croatia General Ante Gotovina.

By their evasion of ICTY's indictments, all three are blocking their countries' progress toward entering Euro-Atlantic institutions, a necessary precondition for stabilizing the Western Balkans. The surrender of Mladic, who is thought to be in Serbia, is necessary for Serbia's joining NATO's Partnership for Peace and for eventual NATO and EU membership.

Karadzic's unwillingness to give himself up is blocking Partnership for Peace membership for Bosnia and Herzegovina.

Gotovina's fugitive status is holding up Croatia's promising candidacy for EU membership.

Whatever the eventual adjudication of his indictment, Ramush Haradinaj by his dignified departure and public statement has proven himself to be a patriot. The same cannot be said of Mladic, Karadzic, and Gotovina, whose selfish actions are standing in the way of much needed progress for Serbia, Bosnia and Herzegovina, and Croatia.

Whatever Mr. Haradinaj's fate, I want to publicly salute him for his personal courage, for the statesmanship he has demonstrated over the last two days, and for having kept his word by doing exactly what he told me he would do with regard to the monastery. I wish him well. I hope justice is served, and I applaud him for his wise decision to cooperate with the Hague Tribunal.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. 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. STEVENS. Mr. President, I ask unanimous consent that I be excused from voting for the remainder of the day.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, those Americans who have been watching this debate on bankruptcy reform for the last 8 days must wonder what in the world is happening in the Senate this evening where we have had these prolonged quorum calls. We have had a series of votes over the course of the day. We had tentatively planned to have another series of votes on amendments at 5 o'clock this evening.

But then because of the concern of our Republican colleagues on one particular amendment, an amendment that would have addressed the provisions in the underlying legislation that repeals the conflict-of-interest provision for major banks, suddenly the quorum call goes in and there is no further action on the issue of bankruptcy.

This is absolutely amazing. Many of us have pointed out how this is special interest legislation. It was written by the credit card companies for the credit card companies. They are the principal beneficiary.

The argument for this legislation, according to the proponents, was: Look, we have a number of spendthrifts in the United States. People ought to act responsibly. This legislation will deal with it.

That was their argument. And that is an argument that those of us who have differed with this legislation would gladly accept. The percentage of spendthrifts, so to speak, is anywhere from 5 to 7 percent of the total number of people who go into bankruptcy. Those of us who have been battling this legislation for the past several days all agree, we would join up with our colleagues in a bipartisan way to address that issue. But that isn't what this bill is about.

This bill is about encumbering working families, primarily, who fall on difficult times, as we have pointed out during the debate. We have offered a series of amendments. A number of my colleagues have offered amendments. Every one of them has been defeated by our Republican colleagues.

Now in the final hours of consideration of this legislation, because one particular amendment is going to touch the banking industry and they are unsure of the votes, they effectively call off all the votes for this evening. That is what is going on here in the Senate.

If you want to put your finger on special interests, look what is happening in the Senate at this moment. We have the Sarbanes-Leahy-Warner amendment, the authors of which were prepared to vote on. But no, the Republicans say, no, we are not going to let the Senate vote on that, because they are not sure of the votes.

They are not sure of the votes. They are not sure that they have the votes to defeat that particular provision that would override a provision that is in the banking bill that repeals some conflict of interest for banking interests. Isn't that something? Doesn't that really show what this legislation is all about? Sure it does.

Why not call the roll? Why not call the roll? We have been listening about let's move the banking legislation along; let's move it along. Why do you have to take time when you are talking about what the impact of this legislation is going to be on the members of the National Guard and Reserves, who go overseas—the 20,000 that would be bankrupt this year and subject to the harsh provisions of this legislation.

And then we had a phony amendment that was accepted here that will do virtually nothing to protect them. What about the homestead exemption, which says that those who exist in five States are going to be able to squirrel tens of millions of dollars away so that if they go into bankruptcy they would be able to protect their million dollar homes? Why not have fairness across the country? Oh, no, we cannot do that because we have a delicate compromise. What is that delicate compromise they are talking about? I thought this legislation was going after spendthrifts. We agree to go after them, but when we know half of the people going into bankruptcy are going there because of health care bills that are run up, with 75 percent of those individuals covered with health insurance, but because they have a heart attack in their family or because they have a stroke in their family, or because they have a child who has spina bifida in their family, they are subject to the harsh provisions of this legislation that will virtually make them an indentured servant of the credit card companies for the next 5 years. That is what is in this bill. We have pointed that out. No, we will vote that down. We will vote down any consideration for the National Guard and any consideration for the Reserve if they happen to be individuals who may be running a family business, one or two working in a particular employment or a mom-and-pop store, and they go overseas and they are going to serve for many months, and the store bellies up, then they are subject to the harsh provisions of this. No, we are not going to give consideration to those veterans. What about those individuals? It could happen to any family—except Members of the Senate, who have very good health care. It would not happen to us. But we cannot get health care for the rest of

Americans. No, that is just too bad, that they have a heart attack in their family, or a stroke, or that they have a sick child, they are going into bankruptcy, and they are going through the harsh provisions of bankruptcy that are going to make them pay for the next 5 years to 10 years \$15 or \$20 a week, and continue to bleed them. That is what is in this bill.

The American people are beginning to understand it. We talked about all the single women who go into bankruptcy because their ex-husbands do not pay them money for child support. Do you think we could have some understanding or some sensitivity to their particular problem? Absolutely not. No way. Let's take those spendthrifts and put it right to them. That is what this bill does. No, we cannot deal with that. What's your next amendment? Let's go on, it is getting late. Let's have time. Time, they say. What has happened here for the last 3 hours? The clock has run and they cannot figure out whether they have the votes to protect the banking industry. That is what is going on. The Republicans are trying to find out whether they have the votes to protect the banking industry, and they get all worked up when we call this special interest legislation. You have not seen special interest legislation until you see this bill.

We used to, around here, look at a piece of legislation and say, who benefits and who suffers with this? Well, it is very easy to find out here who benefits. It is the credit card companies. They are the ones who are going to be put in the catbird's seat. Their estimate in the passing of this bill—listen to me—this legislation makes the bankruptcy courts of the United States the collection agencies for the credit card industry of America. Who do you think pays for the bankruptcy courts? You do, Mr. America. Ordinary Americans pay for those bankruptcy judges and the bankruptcy courts, and they are going to be out there as a collecting agency for the credit card companies. That is what this is about.

It has been difficult to get anyone on the Republican side to understand that. Well, we voted on this some years ago. We have a changed condition from some years ago. Sure, we have the problems of bankruptcy. What about Enron and WorldCom? What about Polaroid in my own State? When they went belly up, the people not only lost their health insurance and pensions, they also lost their investments in what was called an ESOP—their requirement to invest in the companies. They all lost out on it. We are sure of one thing: Ken Lay and all of the people at Enron have big houses all sheltered away in places like River Oaks in Houston, TX. They have all those protected, tens of millions of dollars. What happened to the other people?

So we do have a problem, but this bill doesn't address it. It does nothing about WorldCom or Enron or about Polaroid and what happened to those

workers. Zero. Zip. Nothing. And then, when we found out that there is another loophole where, when wealthier people know they are going into bankruptcy, they can get a clever lawyer and put their money in trust and be free from the reaches of the bankruptcy court, that was addressed. No, we are not going to change this legislation. We are concerned about these spendthrifts—whoever they are. I have been on the floor for most of the time in this debate, and I still have not heard who they are. All I heard is that we passed this several years ago, and we have to pass it again.

Well, there have been many changes since the last time we addressed this bankruptcy bill, and the major companies and corporations have basically done in the workers with their pensions, with their health insurance, with their life insurance; they have done them in, but this bill doesn't do anything about that. And then we have the issue of the use of these trusts to protect the assets of these wealthy debtors who are going into bankruptcy. But this bill doesn't do anything about that. We have the inequities where people in at least 20 or 25 States across the country, their investment in their homes will be protected up to \$5,000 or \$7,000, but not in Texas or Florida, where you can have tens of millions. Fair? Equitable? No, we are not going to do anything about that. No, we have not done anything about any of these issues.

What we are basically saying is that those people who have worked hard, have health insurance, and had a serious health challenge or need in their family—just enough to tip them over—is that we are not going to show them any mercy. Absolutely, no, put the wood to them. Veterans, put the wood to them. Single moms who are not getting their payments of child support and alimony, put the wood to them.

If you happen to fall below the median line, so you are outside—you would think that if you could show that your total certified income was below the median income of your State, you are supposed to be free from repaying. That is what you heard on the floor of the Senate. Yet when amendments are offered to make sure that all the other punitive provisions that are added to that—you have to go out there and enlist in some course on credit. Find a course on credit counseling. These are people who average \$12,000 to \$15,000 a year in terms of income—you are going to require them to take a credit course? They have to demonstrate that they graduate from that course; otherwise they will be subject to the \$5 or \$10 a week in terms of payment.

This bill is all about \$5 billion dollars in additional profits to the credit card companies. That is what this bill is all about. Where do you think it comes from? People who have gone into bankruptcy. Who are those people? They are the people that have the heart attacks.

They are the men and women whose jobs have been outsourced.

They are the mothers, single moms who are not getting paid alimony and child support. Those are the people who are being hurt, and those are the people who are hard-working Americans and who are going to have their final drops of blood drawn out of them with payments. That is this bill.

We have been saying this is a special interest bill; tonight reaffirms it. The Republicans will not vote to restore a provision in this bill that was existing law that dealt with conflicts of interest for banks. They do not want to risk a vote in the Senate tonight. Why don't they explain it? Where is their shame? Why don't they explain it to the American people? Where are they? Where are all these proponents of this wonderful bill to explain why it is so difficult for them to decide tonight? This is just seamy, just a terrible way to legislate.

We have seen these votes, as I mentioned, over time. We have seen who the vulnerable people are. We have seen who the beneficiaries are. We have pointed out what has been happening in America, across the landscape, over the last 4 or 5 years with the loss of jobs, the loss of extending unemployment compensation to people who paid into the unemployment compensation fund for a long time. The jobs are not out there. We have 8 million people who are unemployed, and there are 3.4 million jobs out there. There are going to be people who cannot work, cannot find work.

Mr. REID. Will my friend yield for a parliamentary inquiry?

Mr. KENNEDY. Yes.

Mr. REID. Would the Senator from Massachusetts want an hour of my time?

Mr. KENNEDY. I thank the Senator very much. I appreciate it.

Mr. REID. I yield the Senator from Massachusetts an hour of my time.

Mr. KENNEDY. Mr. President, I thank the Senator.

What has happened out there? We have seen the economic challenge for workers as a result of outsourcing, the mergers that have taken place, a number of them in my own State that are having a direct impact.

There are two important industries that are the fastest growing industries in America. One is the collection industry. That is right, the collection industry, the people who spend their time dialing people who owe money on credit cards. They keep dialing—talk to the principal, talk to their children, talk to them at 3 o'clock in the afternoon when the children come back from school. That industry is growing.

The second industry is part-time workers. That is what is happening. We find with part-time workers that they do not have coverage. People are ready to work. They want to work. They want these benefits. They have fought for these benefits over their lifetimes, the primary benefit being health insurance.

We find out that what has happened in the United States today is the collapse of the pension system. What we are finding today is the lowest rate of savings in 40 years. And what does this administration want to do? They want to give Social Security to Wall Street. They want to give Wall Street Social Security and privatization. They took care of the major companies with the class action bill just a week ago, and now they are ready to take care of the credit card companies. But they cannot quite make up their mind whether the vote in the Senate that would restore existing conflict-of-interest provisions, which are existing law and which, I might point out, the Securities and Exchange Commission supports—not what is in this bill, but the amendment of Senators SARBANES, LEAHY, and WARNER. They support that position. The SEC supports it because of conflict of interest. But not our Republican friends. No, they cannot make up their mind. If they add that to it, the power of the banking industry would be so strong over in the House of Representatives, they will have a stalemate, and then they will not get their goodies. They will not get their goodies. This is what has been happening.

Look at the profits of the industry that is going to benefit, the credit card industry. In 1990, 6.4; 1995, 12.9, 2000, 20; 2004, look at this, \$30 billion, between 2000 and 2004. Find an industry like that in America, except maybe the Guaranteed Student Loan Program, where we have a loan guaranteed by the Federal Government and lenders make 9% on some student loans. Parents wonder why the cost of going to school at the universities are so high, because the government is padding the pockets of student loan providers with taxpayer dollars. These are the profits.

Who are the people affected, as I mentioned before, during the course of this debate? We have 1.5 million bankruptcies annually and half of them are as a result of illness. Nonmedical causes, 54 percent; medical causes, 46 percent. But we are not going to show those. This bill was supposed to go after the spendthrifts. We can get the spendthrifts. We do not have to put these people through the mill. That is what this is really about.

We are here this evening waiting until the clock moves down. We are at our offices constantly wondering when we are going to start the votes. Two votes were supposed to be at 5 o'clock—one to deal with single women who are in bankruptcy because they are not being paid their alimony and child support. That was dismissed out of hand; you will have to take that to a vote. We are prepared to take it to a vote, and we will certainly continue to take it to a vote. If we are not successful on this, anyone who thinks we are going to let these issues go away just does not understand those of us who are opposed to this particular program.

We are also going to have an opportunity to vote on what has happened to

so many of our American families as a result of outsourcing and how they have faced the economic challenges over recent weeks and months. More than 450,000 jobs have been outsourced. Over the next 10 years, we are expecting close to 3.4 million jobs to be outsourced, going outside the country.

We have seen what is happening in manufacturing all across this country. We all know that manufacturing jobs are the ones that have the higher pay. That has been part of the phenomenon. Do you think that concept is of any importance to the proponents of this legislation? Absolutely not. No way.

Health care prices have gone through the roof by 59 percent and the cost of prescription drugs 65 percent, and the fact we are an aging population with our parents, children, almost a third disabled who need those prescription drugs, and the prices are going up through the roof—are we giving them any consideration? Absolutely not. We do not care about the workers who have gotten shortchanged. We do not care about those who have needed prescription drugs and have been bankrupted in paying the prices.

This is the same Republican Senate that would not permit the Secretary of HHS to negotiate prices downward—do you hear me—like we do in the Veterans Administration. Here we have hundreds of thousands of people who are going bankrupt because of increases in the cost of health care and prescription drugs, and we—most of us on this side—who are opposed to these harsh provisions tried to make some difference several months ago to permit the Secretary of HHS to negotiate prices downward, as they do in the Veterans Administration. But, no, we are not going to let you do that. So that was defeated. You cannot import cheaper drugs from outside the country. You cannot get cheaper prices here. And what happens? You end up going into bankruptcy and end up with the harsh provisions of this legislation.

This legislation is not fair, it is not just, and tonight we have seen what this is all about.

The bankruptcy bill as written contains a provision, section 414, which would repeal the provision in current law on investment banks which underwrote a security of the company in bankruptcy from now serving as adviser to the bankruptcy. This is a basic conflict-of-interest prevention in current law, which this bill would repeal. It is one of the many shameful special interest provisions in this bill.

To their credit, Senators LEAHY and SARBANES offered an amendment to remove this provision and maintain the current law against conflicts of interest by the investment banks. It appears that it may have the votes to pass, so to protect the investment banks the Republicans have effectively shut down the process. There should be no doubt, when people finally vote tomorrow, what this bill is all about, who it was for. When it is a fight for the real people,

then we hear from the other side saying, no, no. But when it is their friends in the banks who are threatened, it shuts down debate in the Senate.

Clearly, there is no room in the Republican agenda for the real needs of the real people, the veterans, the workers, the mothers, the children, and the widows.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I will have a little bit to say about what the distinguished Senator from Massachusetts has been talking about, but I rise in opposition to the Kennedy amendment to S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Now, it is important that colleagues on both sides of the aisle fully understand what this amendment does to our bankruptcy laws and what it does to the prospects for reform. Before I start, I will take a few minutes to remind everyone what this bill is all about. The short answer is fairness. Those who can pay their bills should pay their bills. That is the American way.

All law-abiding, bill-paying consumers pay when some do not repay their obligations. You and I and every citizen of this country is going to pay if we allow people who can pay to escape their obligations, and this bill stops the gaming.

This is not too revolutionary an idea, but to listen to some of the opponents of this legislation on the floor these last few days, one would think we are trying to square a circle.

I have been down on this floor quite a bit over the last few days and I have heard many of the arguments from the few Senators against this bill, and I emphasize the “few Senators against this bill.” It sounds pretty familiar. I have been around this place for a long time and I only know one thing for sure. At the end of the day, some on the losing side will think that the underlying bill is without any merits at all and that their concerns have not been treated with the seriousness they feel they deserve.

The principal substantive argument we have heard is that this bill goes too far and too fast; we have to take it slow; we have to rethink this; this bill is too extreme, they say. For some of my colleagues across the aisle, this is the same old song we have heard now for 8 solid years that we have tried to put this bill together and it has always had huge bipartisan support. That is bipartisan support, Democrat and Republican support.

I am a bit confused by some of the arguments that have been used on some of the same old amendments and against the bill itself. Sure, there are places we could have done better in this bill, as in every other legislation. There are always things we could do better. But the votes we have gotten on this bill, on its amendments in committee, and in previous Congresses are



as good an indication as we can ever have of the underlying reasonableness of these proposals.

As a long-time supporter of the bankruptcy bill, I was extremely pleased by the strong bipartisan vote we had on cloture yesterday, 69 to 31. That is not just Republicans; there are a lot of Democrats who know this bill is the answer to a lot of the problems we have in bankruptcy in our society, and who have been working with us for 8 solid years in a bipartisan fashion. But to hear some of our critics, one would think that everybody concerned, all 69 of us, are nutcases who do not know what is going on in our society or do not care for the poor, or for the weak, or for the worker, or for the union man. Give me a break.

I am one of the few people in this body who ever held a union card. I worked for 10 years in the building construction trade unions, earned my journeyman's card as a wood, wire, and metal lather, now a carpenter today, and I am darned proud of that. I think a lot about people who are not as fortunate as we are in the Senate.

As a long-time supporter of the bankruptcy bill, I was extremely pleased by the strong bipartisan vote, 69 to 31, on cloture. That was a big bipartisan vote by any measure. This vote is in keeping with the long record of bipartisan support for this bill over the life of the legislation.

I will briefly review this history: We held our first meeting on this in a Judiciary subcommittee in 1998. I want to make sure everyone heard that right: 1998. Early on, the good-faith compromises began. To give everybody an idea, these are some of the amendments we accepted in committee over the last 7 years. We modified the homestead exemption. We modified the means test. We allowed for sanctioning of attorneys who file abusive claims. We made privacy concessions for filers. We prevented creditors from demanding repayment for debts incurred through predatory lending practices, something that has long been overdue for the poor, the weak, and the unfortunate. All of these were amendments from my Democratic colleagues. I could go through dozens of others.

Two weeks ago, the Judiciary Committee held another markup on the bankruptcy legislation. We adopted five more amendments proposed by our Democratic colleagues. If some of the amendments that have been proposed on the floor sound similar to the matters I listed, that is because they are. Taken in a vacuum, as it might sound to anyone who randomly tunes in on C-SPAN, these amendments might sound reasonable. Yet in proper context of past history and compromises, many of these amendments should be understood for what they are: more of the same.

Many of the amendments address issues we have already negotiated previously. Frequently, these amendments make this a better bill. But now after

so many years of hearing the same complaints, even after we attempted to address concerns by accepting or modifying amendments, including, I repeat, five in their latest and hopefully last markup of bankruptcy reform in the Judiciary Committee, it is less than clear that some of these remaining amendments will improve this already fully vetted bill.

The five amendments adopted in the markup ran the gamut. One was a technical fix that created a more restrictive inflation adjustment plan. We decided to prevent corporate executives—that is corporate executives, by the way—from declaring bankruptcy to avoid paying fines for securities fraud. That does not sound like something that hurts the little guy. We are trying to stop this type of fraud.

We accepted three amendments from the senior Senator from Massachusetts, Mr. KENNEDY. We clarified the means test, even in an instance where we sincerely believed that the means test was already more than clear, to explain that without any debt, health and disability expenses will not be included against a filing for bankruptcy. We allowed for a trustee in cases of fraud involving persons representing the debtor. In an amendment that many think we went too far on, we even accepted a compromise version of an amendment that restricted payments to executives and businesses going through a bankruptcy. Unfortunately, this amendment may discourage senior officials from taking on the task of seeing a company through a difficult financial reorganization. The unintended consequences of this might be to further limit the ability of damaged companies to emerge from bankruptcy and to keep thousands of employees on the job. They may lose those employees. Those employees may lose their jobs if we cannot keep good, competent executives there. I think this issue deserves more attention. But we agreed to it.

I am hopeful. I have been chatting with my good friend from Massachusetts and he has indicated he thinks we might be able to resolve that problem so people will not lose their jobs. But it depends upon what he thinks, not on what I think, because I accepted the amendment in committee, as the person who was in charge of the committee at that time.

Fairness demands that we work with our colleagues in the minority but this is a two-way street. Fairness also demands that large bipartisan majorities, after they have done all they can to reach agreements with the other side, be allowed to move on. That is why we invoked cloture, so we can move on.

This bill is a case study in such accommodation. I could go through dozens and dozens more accommodations we made to the other side, and to people on this side as well. This bill first passed all the way back in the 105th Congress. Let me refer to this chart. In the 105th Congress we passed this bill

97 to 1. I don't think everybody who voted for this was an idiot, who did not care for the poor and the weak and the infirm and the downtrodden. No. We are trying to solve some of their problems. This bill passed the Senate by a 97 to 1 vote. You cannot get much more support than that. There is no denying the bipartisanship of that vote.

When we came back to the issue in the 106th Congress, we again had massive bipartisan support for this bill. The Senate passed H.R. 833 on February 2, 2000, 83 to 14. I think that was a pretty good bipartisan vote. It is virtually the same bill. Then the conference report came back and on December 7, same year, 2000, we passed this same bill 70 to 28. That was a big bipartisan vote—which was right. That bipartisan conference report was supported by Democrats and Republicans. That was vetoed with a pocket veto by President Clinton. He had a right to do that, but he pocket-vetoed it because it didn't have an abortion amendment on it.

What about the 107th Congress? Did we give up hope? I can tell you that I did not. I just could not believe, I still cannot believe that a bill with such wide support could repeatedly fail to become law. So what did we do in the 107th Congress? Let me refer to this chart. In the 107th Congress, on March 15, 2001, this bill passed again, 83 to 15, and then passed again, 82 to 16. Those are bipartisan votes. I don't think the Democrats who voted with us are idiots or did not care for the poor. I don't think they failed to acknowledge that we have to take care of those who are unfortunate in our society. They did acknowledge that it cost every family in America \$400 extra because of what is going on in this system.

All in all, the full Senate has voted favorably on bankruptcy reform legislation five times. Five times, all sweeping bipartisan votes, and the bill is not yet signed into law.

If we adopt any of these amendments from people who will never vote for this bill no matter what we do—they would rather criticize it than vote for it. I can criticize aspects of this bill myself, I believe. But it is a classic working together in the best methodology that we have, to bring everybody together and get legislation done that will do a lot of good. It will cause people, who can afford to, to pay their bills, or at least pay some of their bills.

It seems to me that is the American way. We want to teach our children, our young people, that it is important to pay your bills. It is important to live up to your responsibilities.

We do a lot to make sure corporate America lives up to their responsibilities in this bill as well. The bill is not signed into law yet, but we hope we can get it through—apparently not tonight, but by tomorrow. If not tomorrow, then Friday. If not Friday, Saturday. As far as I am concerned, whatever it takes to get it done.

These reform-minded votes are not just coming from the Senate. Here is

how the House voted over the years, just so everybody knows. There are 535 Members of the House. Here is how they voted: 300 to 125; 313 to 108; 306 to 108. Overwhelming bipartisan votes, because this bill is the best we can do. It will do a lot of good, to make things right in our society. With all due respect, these are not even close calls. They are consistent, bipartisan blow-outs. But, to listen to the opposition, you would think this legislation is supported by only a small minority of Representatives in the House of Representatives or in the Senate. Nothing could be further from the truth.

I really do not know what else we can do. We have compromised when it was reasonable to do so. As a matter of fact, in our very first subcommittee debate on this issue we accepted an amendment from my distinguished colleague, the Senator from Illinois, that adjusted the requirements for being subject to the means test. That amendment created a safety valve for those who fall below the national median income.

This was an important amendment. This bill does not track it exactly, but our exclusion of those who fall below the State median income takes this original amendment as a guide. It materially limited the reach of the means test. It allowed a fresh start to those poor people who are drowning in a sea of debt with no way to pay it back.

I said many times during this debate and I will say it again: 80 percent of bankruptcy filers will be excluded from the means test—80 percent. They will be permitted to file chapter 11, which will completely wipe out their debts. The supposed draconian means test has results in only one half of the mere 20 percent that it even applies to. It allows those with incomes that remain above the State median income, after numerous health and education and other exceptions, to pay back some of their debt over the course of 3 or 5 years. It gives them even a break there.

When all is said and done, the means test in this bill will only result in about 1 in 10 individuals who file bankruptcy from ever having to pay some of their past debts with future earnings. So 10 percent of 100 percent will have to do some payback because they can afford to do it. It is only right. They should not saddle all America with their debts when they can afford to pay them back. But in the first markup, the man who is now the minority whip, my friend from Illinois, proposed the amendment that remains at the heart of the means test in this bill, and we accepted it.

What is amazing to me is that when my colleagues want to raise taxes they are always talking about how great the means test is. But when we want to make sure that people who can pay can pay, suddenly the means test is not a good test. You can't have it both ways. It is amazing to me. It is almost hypocrisy.

I am pleased that cloture has been invoked, giving us the opportunity to once again pass this bill. It is getting to the point where some might even forget why we initiated this legislation. We have been at it for 8 years now. Some of those who oppose the bill and are offering final postcloture amendments are flying in the face of years and years of hard work and bipartisan compromise. By the way, the ones who bring up the amendments will never vote for this bill no matter what you do, unless it is a complete cave-in, so we cannot solve the problems that are eating our country alive in bankruptcy. And they do it under the guise that they are trying to protect the weak and the infirm and those who really cannot help themselves.

Give me a break. We over here get so tired of those populist arguments. We hear them over and over and sometimes I think they think the more they yell and scream the more people must think their arguments are serious. I hope people are listening because, my gosh, after 8 years of compromising and working and bringing people together and listening to both sides and doing everything we can to accommodate, why do we have to go through all the same amendments over and over again; they have been defeated time and time again because they deserve being defeated. Yet it happens every time—they get up and act like the world is coming to an end because their populist rhetoric is not being listened to. Unfortunately, there are people out there who really believe this stuff when somebody starts yelling, screaming, and shouting on the Senate floor.

The fact is that many of these final amendments being proposed during this debate are just further adjustments of adjustments to adjustments that were already made during this process. We have made further adjustments and refinements when we found broad consensus. These amendments have been brought up postcloture.

You would think there would be a time when you admit that you have had your shot, you have had 8 years of your shot; you have had amendment after amendment, the same thing over and over again, and the amendments have been defeated. You would think sooner or later they would come to the conclusion to stop holding up the Senate and the people's business and let this bill go; we lost this bill even though we as liberals don't like it. But there are liberals who do like it because they know it is right. They know what we are trying to do here will work to the betterment of the bankruptcy laws of the country.

I would like to add that during the course of the floor debate over the last week and a half we accepted more amendments that will improve this bill.

The Senate agreed to the Sessions amendment that makes clear that bankruptcy judges must consider military and veteran status and health care

costs when determining whether a portion of future income must be used to pay past debt.

The Sessions amendment addressed many of the issues presented by Senator DURBIN with respect to military personnel and veterans, and Senator KENNEDY with respect to health care costs.

We accepted the Specter amendment that made clear how bankruptcy judges will be paid through increased filing fees. This important amendment stands for responsible government and eliminates any objection to the legislation based on a budget point of order.

In addition, we adopted an important amendment by Senator LEAHY that corrects some potential problems that relate to privacy of certain personal information, including Social Security numbers.

In short, we have improved this bill on the floor in a number of important aspects. We have been open to our colleagues. We have tried to accommodate them where we can. But there are areas where we can't and have this bill become law.

I think that the cloture vote we just took is evidence of those changes to this already moderate legislation. I understand some Senators do not think they have had an adequate hearing. At the beginning of this process, I gave them my word to at least consider amendments from all sides, and I believe we have done so. This institution is rather unwieldy, though. I think anybody who watches it or thinks about it has to admit that. That is probably putting it mildly. Unfortunately, even decent arguments, if they come at the wrong time, are going to have an uphill climb.

As I said earlier, since I was first elected I have tried my best to reach out to the other side as a good-faith actor. That is no less true with this bankruptcy bill. I have listened to more proposals and voted on more amendments that I can recall, and so has Senator GRASSLEY and Senator SESSIONS and others who have worked so hard on this issue. My hope is that as we move forward the opposition remembers the bigger picture. Even those few Senators who will not vote for final passage know that this bill was made better because we have accepted their amendments over the years.

At this late date, though, it is difficult to accept many more for procedural reasons. I oppose the amendment offered by the distinguished Senator from Massachusetts for all of these substantive reasons.

Let me give a couple more substantive reasons. I accept Senator KENNEDY's argument that health care costs are the key factor in bankruptcy. I have heard that for days around here; that most people go into bankruptcy because of health care costs. Much of his argument stems from the so-called Warren study. Let me talk about the Warren study cited by Senator KENNEDY and give a response to it by the

Department of Justice. Here is what the Department of Justice said. I would suggest that the Warren study has been greatly overplayed here on the floor.

They said:

Professor Warren, a long-time opponent of bankruptcy reform, and her so-called "studies," should be approached with skepticism.

Though Ms. Warren's study claims that more than half of consumer bankruptcies are medically related, the DOJ has told us that only "the conclusion that almost 50 percent of consumer bankruptcies are 'medical related' requires a broad definition and is generally not substantiated by the official documents filed by debtors."

In other words, this claim that 50 percent of the bankruptcies are caused by medical expenses is pure bull.

The means test doesn't apply to the poor or anyone without the ability to re-pay.

Anyone under the median income for their State is automatically exempt from the means test.

They can go right into chapter 7 and have every one of their debts removed; that is, the poor.

To the extent that "above median" families have ongoing medical expenses, they are permitted to use those expenses as a reason to not pay their debts. These are people above the median income level.

GAO's 1999 analysis of the expenses allowed under the means test clearly shows that the means test permits all debtors to account for health care expenses.

For people with repayment capacity and financial resources, the bankruptcy legislation prevents abuse by requiring some of their bills to be repaid in exchange for not having to pay the full amount.

This is fair. If they can pay some, they ought to pay some. We shouldn't just stick the hospitals and the doctors and everybody in medical care with these unpaid debts.

I was talking to one of the large hospital chains the other day. I asked them how much uncompensated debt they had every year; in other words, medical care that you have given that you receive no compensation for. It was almost \$1 billion a year that they have given in free medical care for the poor and for some who game the system. Guess who pays for that. You and I, and everybody else in the final analysis because it is going to have to come back in most cases to Medicaid and Medicare. These are Federal programs that wind up with those debts. By the way, we pay for them for a variety of reasons. We don't pay almost \$1 billion to those hospitals. They don't get anything in most cases. That uncompensated debt means they are not getting paid. They are giving emergency care. That is why some hospitals are now doing away with emergency care facilities, because they can't keep doing it. People who do not pay their bills raise the cost of everything for all of us. That is OK when they can't pay their bills when they are poor. But when they can, and when they think they

can just escape them by going into bankruptcy and they are capable of paying some or all of their bills, they ought to help to do it.

For people with repayment capacity and financial resources, the legislation prevents abuse by requiring some of the bills to be repaid in exchange for not having to pay the full amount.

If someone can't pay health care debts, the bill does not force them to. This bill will not force them to. If they can pay health care debts, they should repay those debts and those bills just like everybody else has.

The Sessions amendment we adopted last week addresses this problem. It simply addresses the problem.

Let me close by addressing the investment banker provision my colleague from Massachusetts has strenuously commented upon. I am not sure if strenuous is quite the word, but I will use that word here tonight. It seemed to me a little more than strenuous.

Companies in financial distress need the ability to retain good help. They need to be able to keep people on who know the company best and who will enable that company to emerge from reorganization a more healthy outfit that can continue providing for its employees and contribute to the economy.

Under current law, investment bankers alone among professionals in the business world were deemed, *per se*, interested persons who could not work for a company after filing for bankruptcy if they had served as banker for any outstanding security of the corporation. This bill simply extends the test, one of the materially adverse interests that applies to lawyers, accountants, and other professionals to investment bankers.

This amendment makes sense. It continues to provide the courts with discretion to exclude bankers from participation in a reorganization while giving companies more flexibility as they attempt to reorganize and save themselves.

The amendment under consideration would undo this flexibility by imposing a strict 5-year exclusion on participation by investment bankers. This makes little sense. I will be voting against the amendment. I urge my colleagues to do the same. I especially make the case that this is not special interest legislation, as my colleague says it is. This is a classic message amendment. The message we should send tomorrow is to vote "no" on this amendment. When we talk about message amendments, these are amendments that our colleagues know we cannot take for very good reasons, but they are trying to score political points with the Nation. Anyone who looks at these matters carefully and understands the law would say, let's not let these message amendments take over a good bill that can do so much good for our society. We then should vote "yes" on final passage because this is a good, balanced, bipartisan, bicameral bill.

What gets me down is I have heard these arguments for 8 solid years. Most of them do not make sense. Most of them are message arguments for political reasons by people who will never vote for this bill, basically have not helped bring this bill about, who have not cooperated in trying to bring both Houses together, who are not part of the huge bipartisan consensus on this bill, and who are trying to score political points, hoping we will never come on the floor and refute them.

I could not sit back and not come to the Senate tonight because we have to quit making political points. We ought to pass this bill so we can help this country and its people go forward in ways it should.

People who can pay their debts ought to. Companies that are doing wrong ought to pay for that. Where there is fraud, this bill will attack it.

We can go through so many good aspects of this bill. Could it be better? I have never seen a bill pass here of any magnitude that could not be improved. But we have had 8 years of improvements and this is the bill that will pass if we do not amend it. We should pass it. We should move forward from here.

Having said that, that does not mean we should not immediately start work on the next bankruptcy bill to see if there are ways we can improve even this. As this bill becomes law, we will find ways that it may not work as well as we contemplated and we ought to continually oversee this and make sure this bill works in the best interests of all Americans, that it works in the best interests of the poor, and the working people, our union men and women, people who have to make a living all over this country, and for investors and everybody else in our society. We ought to make sure we do the best we can. I assure you we will continue to try and work to continue to improve our laws in this country. That is what this body is all about.

I will briefly mention an important issue that arose from the amendment at the markup. This amendment offered by my friend from Massachusetts, Senator KENNEDY, seeks to prevent unfair and unnecessary retention bonuses to insiders in chapter 11 companies. The goal here is certainly laudable and I agree with the desire to try to do that, but it has come to light since our markup that this amendment may act to effectively prohibit responsible companies undergoing reorganization—in other words, trying to save themselves—from keeping key employees who may best be able to steer the company back into solvency.

I have a letter from the Association of Insolvency and Restructuring Advisors enumerating these concerns in further detail and I ask unanimous consent it be printed in the RECORD.

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

ASSOCIATION OF INSOLVENCY AND  
RESTRUCTURING ADVISORS,  
March 1, 2005.

Sen. ARLEN SPECTER,  
Chairman, Committee on the Judiciary, U.S.  
Senate, Washington, DC.

DEAR MR. CHAIRMAN: The undersigned are financial and legal professionals who serve as the Board of Directors of the Association of Insolvency and Restructuring Advisors (AIRA). As board members we work to further the AIRA's goal of increasing industry awareness of the organization as an important educational and technical resource for professionals in business turnaround, restructuring, and bankruptcy practice, and of the Certified Insolvency and Restructuring Advisor (CIRA) designation as an assurance of expertise in this area.

We write to make you aware of serious concerns we have regarding a provision contained in S. 256, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005." The provision in question effectively prohibits the use of key employee retention plans in Chapter 11 reorganizations. It was added during the Judiciary Committee mark-up of the bill and elicited little attention at the time. However, we believe this provision will cause considerable harm to a number of companies that will become subject to bankruptcy proceedings, and, most importantly, to their employees, customers, and creditors.

When a company is operating in Chapter 11, a primary responsibility of management is to maintain and grow the company's value for the benefit of all of its stakeholders. A company that is well-managed through its restructuring benefits its creditors, employees, retirees, unions and the local communities of which the company is a part. Companies that fail to successfully reorganize in Chapter 11 are liquidated. Creditors receive pennies on the dollar and employees see their jobs and retirement savings destroyed.

When companies enter Chapter 11, it is critical that they attract and retain top management talent. But Chapter 11 is also the most difficult time to attract and retain such talent. Managers of Chapter 11 companies are faced with intense scrutiny, stress, insecurity, and an enormously complex process. Compensation and incentive tools used by non-bankrupt companies such as equity compensation programs are not available to assist with attracting and retaining the type of management talent necessary to bring the company successfully through the Chapter 11 process—this is because the pre-petition equity is almost always without value. Key employee retention plans ("KERPs") have become common practice since the early 1990's and have been viewed by courts, debtors, and creditors alike as an important and useful way to help reorganization by retaining key employees.

Bankruptcy courts have agreed with this reasoning, and many judges have used their judicial discretion to approve KERPs. For a court to approve a KERP under existing law, however, a debtor must use proper business judgment in formulating the program, and the court must find the program to be reasonable and fair. Creditors have the right to object to proposed KERPs, and judges are presented with a full evidentiary record upon which to make a determination. If a KERP is not appropriate or if it is not in the best interest of the company's creditors, the judge can refuse to approve it.

In the last few years, there has been a trend, with which we agree, towards stricter judicial scrutiny of proposed KERPs by bankruptcy judges. Such a trend seems appropriate in the wake of numerous high profile bankruptcy filings where management's misconduct or mismanagement has led to

the Chapter 11 filing. Judges have discretion to deny KERPs in these circumstances, and they do so when the facts and circumstances warrant.

Unfortunately, S. 256 as reported by the Senate Judiciary Committee includes an amendment authored by Senator Edward M. Kennedy (the Kennedy amendment) that places significant limits on retention bonuses and severance payments to employees of companies in Chapter 11. It would prohibit a bankruptcy judge from approving retention bonuses in every Chapter 11 case unless he or she finds that the company in question has proven that the employee has a bona fide job offer at the same or greater rate of compensation; was prepared to accept the job offer; and the services of that employee are "essential to the survival of the business". The amendment also places significant caps on the amount of such bonus and payments.

The Kennedy amendment appears to be motivated by a desire to combat KERPs in Chapter 11 cases where employee-related fraud substantially contributed to the bankruptcy of the company. Yet, by painting with such a broad brush, the Kennedy amendment will, if enacted, effectively eliminate all companies' ability to ever receive court approval for a KERP. Federal bankruptcy judges would have little or no discretion to approve KERPs. In turn, bankrupt companies would have less flexibility in trying to retain or attract necessary employees. This result will cause considerable harm to companies in bankruptcy, their employees, and their creditors.

It is apparent that the Kennedy amendment is designed to prevent abuses of the system, where creditors' employees' and retirees' monies are unnecessarily expended for the enrichment of management. Whether there currently is or is not sufficient judicial scrutiny of KERPs is a valid question, insofar as the overall bankruptcy system allows debtors a fair amount of flexibility in exercising reasonable judgment—but there must be an approach better than handcuffing the judiciary and stakeholders in bankruptcy cases by essentially precluding all use of KERPs. The proper use of KERPs requires an analysis of all facts and circumstances of the case, and not what is essentially a blanket proscription of these tools.

Senator Kennedy has advanced an important public policy discussion with his amendment. Managers who have had responsibility for driving a company into bankruptcy should not be paid a bonus to remain. Similarly, if the retention of an employee would not enhance a company's value for its stakeholders, they should not be paid a bonus to stay. Current law provides bankruptcy judges with the discretion necessary to deny a KERP in such circumstances and bankruptcy judges do deny KERP payments in these circumstances. Still, if the Congress wishes to improve the operation of current law while still safeguarding the ability of the courts to approve legitimate KERPs, we would welcome a discussion on how best to achieve that end. Unfortunately, S. 256, as reported by the Committee, goes too far and should be amended so as not to unnecessarily limit the bankruptcy court's ability to determine what is in the best interest of each individual bankruptcy estate.

Mr. Chairman, we thank you for considering our views on this important matter. We would be pleased to address any questions you or other members of the Committee on the Judiciary may have.

Sincerely,

The members of the board and management of the Association of Insolvency and Restructuring Advisors.

Soneet R. Kapila, CIRA, Kapila & Company; President, AIRA; James M.

Lukenda, CIRA, Huron Consulting Group; Chairman, AIRA; Grant Newton, CIRA, Executive Director, AIRA; Daniel Armel, CIRA, Baymark Strategies LLC; Dennis Bean, CIRA, Dennis Bean & Company; Francis G. Conrad, CIRA, ARG Capital Partners LLP; Stephen Darr, CIRA, Mesriow Financial Consulting LLC; Louis DeArias, CIRA, PricewaterhouseCoopers LLP.

James Decker, CIRA, Houlihan Lokey Howard & Zukin; Mitchell Drucker, CIT Business Credit; Howard Fielstein, CIRA, Margolin Winer & Evens LLP; Philip Gund, CIRA, Marotta Gund Budd & Dzera LLC; Gina Gutzeit, FTI Palladium Partners; Alan Holtz, CIRA, Giuliani Capital Advisors LLC; Margaret Hunter, CIRA, Protiviti Inc; Alan Jacobs, CIRA, AMJ Advisors LLC.

David Judd, Neilson Elggren LLP; Bernard Katz, CIRA J H Cohn LLP; Farley Lee, CIRA, Deloitte. Kenneth Lefoldt, CIRA, Lefoldt & Company; William Lenhart, CIRA, BDO Seidman LLP; Kenneth Malek, CIRA, Navigant Consulting Inc; J. Robert Medlin, CIRA, FTI Consulting Inc; Thomas Morrow, CIRA, AlixPartners LLC.

Michael Murphy, Mesriow Financial Consulting; LLC; Steven Panagos, CIRA, Kroll Zolfo Cooper LLC; David Payne, CIRA, D R Payne & Associates Inc; David Ringer, CIRA, Eisner LLP; Anthony Sasso, CIRA, Deloitte. Matthew Schwartz, CIRA, Bederson & Company LLP; Keith Shapiro, Esq. Greenberg Traurig LLP; Grant Stein, Esq., Alston & Bird LLP; Peter Stenger, CIRA, Stout Risius Ross Inc; Michael Straneva, CIRA, Ernst & Young LLP.

Mr. HATCH. We have language in this issue which would mitigate what I believe are unintended effects of this amendment. Under this modified language, all payments where "misconduct, fraud, or mismanagement" is present are prohibited. This language also keeps the burden on chapter 11 companies to prove that retention bonuses are "necessary, fair and reasonable," and "likely to enhance a successful reorganization."

This seems like a reasonable fix to me and I hope we include this language in the bill. I appreciate any help my friend from Massachusetts would give on that particular issue because if we are interested in doing what is right, this will do what is right.

Mr. KOHL. Mr. President, I am in support of the Kennedy-Kohl amendment. It would eliminate the most flagrant abuse of the bankruptcy system under current law—the unlimited homestead exemption. This exemption allows debtors in five states to purchase expensive homes and shield millions of dollars from their creditors. All too often, millionaire debtors take advantage of this loophole by buying mansions in states with unlimited exemptions like Florida and Texas, and declaring bankruptcy and yet continue to live like kings. Our measure will generously cap the homestead exemption at \$300,000—that is: it permits a debtor to keep \$300,000 of equity in his or her home after declaring bankruptcy.

This amendment, with even lower threshold amounts, has been adopted

twice by the Senate by wide margins in the course of considering previous bankruptcy bills, in both the 106th and 107th Congresses. As a result of my efforts in the past bankruptcy debates, the underlying bill that we are debating already contains a provision on the homestead amendment that gets at the worst abusers of this loophole, including felons. In fact, it will be the first Federal law ever on the homestead exemption.

The provision included in the bill, however, while obviously better than the current law's allowance of an unlimited homestead exemption, is still not a comprehensive solution to the current abuses of the law. It would allow those who establish their residence in an unlimited homestead state more than 3 years and 4 months before a bankruptcy filing to shelter an unlimited amount of money in their residences. All it would take for a greedy or unscrupulous individual to take advantage of this provision to defraud his or her creditors is some planning and foresight. And it does nothing to stop lifelong residents of these states from taking advantage of the unlimited homestead exemption to protect their assets from creditors.

A review of a few examples in recent years show how willing disreputable debtors are to engage in such planning to hide their assets. Let me give you just a few of the many examples:

John Porter, WorldCom's cofounder and former Chairman, bought a 10,000 square-foot ocean front estate in Palm Beach, Florida in 1998, a home featured on the cover of the November 2004 issue of *Luxury Homes* magazine, and now worth nearly \$17 million. The IRS says he owes more than \$25 million for back taxes, and he is the defendant in several multi-million dollar securities fraud lawsuits resulting from the failure of WorldCom. Porter filed for bankruptcy in May 2004. Florida's homestead exemption allows Porter to keep most of the value of the house.

The former Executive Vice President of Consecos has sought to avoid repaying \$65 million in loans from Consecos by selling 90% of her and her husband's assets and buying a \$10 million home on Sunset Island in Miami Beach, FL.

In 2001, Paul Bilzerian—a convicted felon—tried to wipe out \$140 million in debts and all the while holding on to his 37,000 square foot Florida mansion worth over \$5 million—with its 10 bedrooms, two libraries, double gourmet kitchen, racquetball court, indoor basketball court, movie theater, full weight and exercise rooms, and swimming pool.

The owner of a failed Ohio Savings and Loan, who was convicted of securities fraud, wrote off most of \$300 million in debts, but still held on to the multi-million dollar ranch he bought in Florida.

Movie star Burt Reynolds wrote off over \$8 million in debt through bankruptcy, but still held onto his \$2.5 million Florida estate.

Sadly, those examples are just the tip of the iceberg. Several years ago, we asked the GAO to study this problem. At that time, they estimated that 400 homeowners in Florida and Texas—all with over \$100,000 in home equity—profited from this unlimited exemption each year. And while they continued to live in luxury, they wrote off an esti-

mated \$120 million owed to honest creditors. This is not only wrong; it is unacceptable.

In stark contrast, in most States debtors may keep only a reasonable amount of the equity they have in their homes. For example, in my home State of Wisconsin, when a person declares bankruptcy, he or she may keep only \$40,000 of the value of their home. This permits creditors access to any additional funds that could be used to repay outstanding loans, yet allows the debtor to preserve \$40,000 which is more than enough for a fresh start. Most States reasonably cap their homestead exemptions at \$40,000 or less.

The bankruptcy reform bill is intended to wipe out abuse by debtors who run up large bills and then use the bankruptcy laws as a method of financial planning. Our amendment does exactly that.

Unlike the compromise version currently in S. 256, this amendment completely closes this inexcusable loophole that allows too many debtors to keep their luxury homes, while their legitimate creditors—like kids owed child support, ex-spouses owed alimony, state governments, small businesses and banks—get left out in the cold.

While the unlimited homestead exemption may not be the most common abuse of the bankruptcy system, it is clearly the most egregious. If we really want to restore the stigma attached to bankruptcy, these high profile cases are the best place to start.

In both the 106th and 107th Congresses, an overwhelming number of our colleagues agreed with us and voted to cap the homestead exemption by wide margins. In the 106th Congress, this proposal was adopted in the Senate by a vote of 76–22. In the 107th Congress, a motion to table this proposal was defeated in the Senate by a vote of 60 to 39, and this amendment was then adopted by voice vote. The vote this year is exactly the same as the one in the 106th and 107th Congresses. If you were against rich debtors avoiding their creditors the last two times, then you should be against rich debtors avoiding their creditors this time.

The simple hard cap that we propose with this amendment is not only the best policy; it also sends the best message: bankruptcy is a tool of last resort, not financial planning. Even though I would prefer that this amendment include an exemption for family farmers, it does address the need to go after the worst abusers, no matter how wealthy.

In closing, we should remember that one of the central principles of the bankruptcy bill is that people who can pay part of their debts should be required to do so. But the call to reform rings hollow when the bill creates an elaborate, taxpayer funded system to squeeze an extra \$100 a month out of middle class debtors and yet allows people like Burt Reynolds to declare bankruptcy, wipe out \$8 million in debt, and still hold on to a \$2.5 million

Florida mansion. I urge my colleagues to support this amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. FRIST. Mr. President, I ask unanimous consent that all time be considered as expired under rule XXII with respect to the pending bill; I further ask consent that at 11 a.m. tomorrow the Senate proceed to a series of votes in relation to the following amendments; I further ask consent there be 2 minutes equally divided for debate prior to all votes in the series: Kennedy, No. 70; Kennedy, No. 69; Akaka, No. 105.

I further ask consent that on Thursday, at a time determined by the majority leader after consultation with the Democratic leader, the Senate proceed to votes in relation to the following amendments: Leahy 83; Durbin 112; Feingold 90; Feingold 92; Feingold 93; Feingold 95; Feingold 96; Schumer second-degree amendment numbered 129; Talent No. 121.

I further ask unanimous consent that amendments Nos. 87 and 91 be agreed to en bloc with the motion to reconsider laid upon the table; provided further that all other pending amendments—Nos. 45, 50, 52, 53, 72, 71, 88, 94, 97, 98, 99, 100, 101, and 119—be withdrawn and no further amendments be in order other than the possibility of a further Talent second degree which has been filed and a managers' amendment which has been cleared by both leaders.

I finally ask unanimous consent that following the disposition of the above amendments, the bill be read a third time and the Senate proceed to a vote on passage of the bill, with no further intervening action or debate.

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

#### MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

#### NOTICE OF PROPOSED RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be entered into the RECORD today pursuant to section 304(b)(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384 (b)(3)).

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