PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have created us in Your own image; forgive us when we return the compliment by trying to create You in our image, projecting onto You human judgmentalism. We evade Your judgment of our judgments. Our judgments divide us from one another. We condemn those who differ with us; we miss Your lordship by lording it over others. We need to be reconciled to You, Lord. Forgive any pride, prejudice, or presumption. Our Nation is deeply wounded by cutting words and hurting attitudes toward other religions, races, and political parties. We are divided into camps of liberal and conservative, Republican and Democrat, and from each camp we shout demeaning criticisms of each other. Forgive our arrogance, but also forgive our reluctance to work together with those with whom we differ. We confess that Your work in our Nation is held back because of intolerance.

We know that You are the instigator of our longing to be one and the inspiration of our oneness. Bind us together with the triple-braided cord of Your acceptance, atonement, and affirmation. In Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable GEORGE VOINO-VICH, a Senator from the State of Ohio, led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.
Mr. HATCH. Then I ask unanimous consent that the votes occur with respect to the pending amendments in stacked sequence, beginning at 2:15 p.m., today, and that there be 5 minutes for debate to be equally divided for closing remarks for each amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. I move to table both amendments.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. WELLSTONE. Mr. President, we are talking about tabling the amendments this afternoon; is that right— not now?

Mr. HATCH. No. When they occur, they will be tabled.

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

The Senator from Minnesota.

AMENDMENTS NOS. 2537 AND 2538

Mr. WELLSTONE. Mr. President, first of all, I remind my colleagues of what I said last week about this legislation which I think, with all due respect to— I do have a great deal of admiration for Senator Hatch—and it is still fundamentally flawed legislation. It contains numerous provisions which are unbelievably harsh toward those citizens who are most vulnerable in our society. And that troubles this Senator.

I think the entire concept of the bill is wrong. It addresses a crisis that appears to be self-directed. It rewards predatory and reckless lending by banks and credit card companies which fed the crisis and then, further, have actively participated in it.

The article then explains what the revised bankruptcy code became back in 1984:

"Banks and credit card companies also changed their behavior after the "strength-and-solvency" amendments were passed. First, they began cutting back on the number of new accounts offered to consumers. Second, they worked harder to make sure of debtors its to borrow and that they would pay back the new loans. Third, they began building less money. They were more careful about to whom they lent the money. In fact, overall consumer debt actually declined in 1996. And guess what. There were fewer bankruptcies. But if S. 625 became law, this increase in bankruptcy filings would be more profitable to overburden folks with debt, and the banks and credit card companies will fall over themselves trying to do it. But this time, America’s working families are going to try to pay even more of a price."

This argument isn’t purely historical or theoretical. Empirical data backs it up. I want to take my colleagues through a little bit of history. I want to read from an article published in the August 13, 1984, issue of Business Week.

The article was entitled: “Consumer Lenders Love the New Bankruptcy Laws.” It was written in the aftermath of Congress’ last tightening of the bankruptcy code in 1984. Here is how the article goes:

"It doesn’t take much to get a laugh out of Finn Casperson these days. Just ask him the outlook for Beneficial Corp. now that the U.S. has a tough new bankruptcy law. “It looks a lot rosier,” says the chairman of the consumer finance company, punctuating the assessment with a hearty chuckle."

The article then explains what the banks and credit card industries got back in 1984:

"But when someone seems to be abusing the revised law, a judge can, on his or her own, throw a case out of Chapter 7, leaving the debtor to file under Chapter 13. And in Chapter 13, where an individual works out a repayment plan under court supervision, lenders now can get a court order assigning all of a borrower’s income for three years to repay debts . . ."

Anyway, it goes on to say that the lender does not have to worry any longer and they can have these predatory practices and they can target people and they do not have to worry if there is not protection for people. But there is protection for them.

Does this sound familiar to my colleagues? These “reforms” —and I put “reforms” in quotes—are substantially similar to what the industry says are desperately needed now—that means to curb abusive filings. That is exactly what the Congress gave the credit card industry in 1984. But the question is, after we passed that bill in 1984, how did lenders behave? What did lenders do? And what did lenders do with the “strength and tightening” of the bankruptcy code? That story will help us answer the question: If we give them this new, stricter, lopsided law in 2000, what will they do with it?

From the same 1984 Business Week article:

"Lenders say they will make more unsecured loans from now on, trying to lure back the generally younger and lower-income borrowers recently turned away."

Why not? We are giving them all the protection in the world. They can go about with all kinds of unscrupulous practices that I am going to talk about: Target poor people, target single parents, target young people, and not have to worry.

But that is exactly the problem. The consumer finance industry went after these folks with a vengeance post 1984. Lenders felt so protected by the new bankruptcy law that they eventually threw caution to the wind and began using the same aggressive, borderline deceptive and abusive tactics that are now common in the industry. That is exactly what we are going to do with this law—give them a blank check to continue with this deception.

Mark Zandi, in the January 1997 edition of the Regional Financial Review, writes:

"While forcing more households into a Chapter 13 filing, though an income test would raise the amount that lenders would ultimately recover from bankrupt borrowers, it would not significantly lower the net cost of bankruptcies."

I emphasize:

"Tougher bankruptcy laws will simply induce lenders to ease their standards further. That is exactly what we are doing with this bill. Again, we know this is exactly what happened. Credit card companies sent out over 3.5 billion solicitations last year. They use aggressive tactics to sign up borrowers. Is there anything in this legislation that holds them accountable? No. Once again, the big givers and heavy hitters and well-connected dominate. But when it
comes to the poor, when it comes to single-parent families, when it comes to senior citizens, when it comes to the people who are most vulnerable, we have unbelievable harshness in this legislation.

The credit card companies use aggressive tactics to sign up borrowers—and to keep you in debt once they get you. They also go after low-income individuals, even though they might not be able to pay back the loans. Why? Because they are desperate for credit. They have no other avenue. Poor people can be charged exorbitant interest rates and fees. Despite the fact that there are hundreds of credit card firms targeting low-income borrowers, interest rates and terms on these cards have not been driven down by the supposed “competition.”

For these borrowers, for low-income people, the market is failing.

In a June 3, 1999, interview in USA Today, Joe Lee, a respected bankruptcy judge for over 37 years in the Eastern District of Kentucky, placed the blame for the current high number of bankruptcies squarely on the backs of the banks and the credit card companies. There is not a word in this legislation holding them at all accountable for their unscrupulous practices; they all target people who are desperate for credit and have no other choice but to receive loans on horrible terms, the poor and the vulnerable.

When asked if he had seen many people file bankruptcy who couldn’t afford to pay most of their debts, he said—because that is the premise of this legislation, that you have all this abuse—No. It’s simply not true. Most of them are very poor, drowning in debt. The target (of bankruptcy reform) should be the consumer credit [card] industry and the laws governing the extension of consumer credit. Instead they’re taking the blame for the current high number of bankruptcies.
dated September 14 asserts, “The truth is that bankruptcy reform gives much-needed help to single parents and their children who are dependent on family support payments. The provisions in law are significant: ‘Distorting the facts about reform helps no one.’” The real distortion is the assertion that S. 625 would benefit women and children. The truth is that, notwithstanding the pleadings of its proponents, S. 625 would help women and children. Thirty-one organizations devoted exclusively to promoting the best interests of women and children continue to oppose bankruptcy reform. The concerns expressed in the professors’ letter of September 7 regarding how S. 625 would hurt women and children have not been resolved—they have not even been addressed.

First, one of the biggest problems the bill presents for women and children was stated in the September 7 letter: “Women and children as creditors will have to compete with powerful creditors to collect their bei on bankruptcy cases.”

This increased competition for women and children will come from many quarters: from powerful credit card issuers, whose credit card claims increasingly will be excepted from discharge and remain legal obligations of the debtor after bankruptcy; from large retailers, who will have an economic time of obtaining of debt, that they could be discharged; and from creditors claiming they hold security, even when the alleged collateral is in large amounts, virtually worthless. None of the changes made to S. 625 and none being proposed addresses these problems. The truth remains: If S. 625 is enacted in its current form, women and children will face increased competition in collecting alimony and support claims after the bankruptcy case is over.

Second, it is a red herring to argue, as do advocates of the bill in tout how the bill will “help” women and children, that it will “Make child support and alimony payments the top priority—no exceptions.” True enough—but, as the law professors pointed out in the September 7 letter: “Giving ‘first priority’ to domestic support obligations does not solve the problem.”

Granting “first priority” to alimony and support claims is not the magic solution the consumer credit industry claims because “priority” means only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95% of bankruptcy cases make NO distribution to any creditors because there are no assets to distribute. Granting women and children a first priority for bankruptcy distribution permits them to stand first in line to collect nothing.

The hard-fought battle is over reaching the ex-husband’s bank—struggling now to collect alimony and child support after their ex-husband’s bankruptcy, we also express our concerns on behalf of the more than a half million women heads of household who will file for bankruptcy this year alone. As the heads of households, they have a special stake in the pending legislation. Women heads of households are now the largest demographic group in bankruptcy, comprising 48% of all filings. According to their own data, they are the poorest. The provisions in this bill, particularly the provisions that apply without regard to income, will fall hardest on the heads of household who are dependent children who is hopelessly insolvent and whose Income is far below the national median have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of the single mother who hoped to work through a chapter 13 payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children’s clothes, even if it meant that successful completion of a repayment plan was impossible.

These two unassailable: S. 625 forces women to compete with sophisticated creditors to collect alimony and child support after bankruptcy. S. 625 makes it harder for women, even when they are in financial trouble. We implore you to look beyond the distorted “facts” peddled by the credit industry. Do not pass a bill to hurt women and children.

Thank you for your consideration.

Respectfully yours,

Charles J. Tabb, Professor of Law, University of Illinois College of Law; Peter A. Alces, Professor of Law, College of William and Mary School of Law; Michael E. Alexandre, Professor of Law, The Dickinson School of Law, Pennsylvania State University; Thomas B. Allington, Professor of Law, Indiana University School of Law (Indianapolis); John D. Ayer, Professor of Law, University of California at Davis School of Law; Laura B. Bartell, Associate Professor of Law, Wayne State University Law School; Patrick B. Bauer, Professor of Law, University of Iowa College of Law; Susan Block-Lieb, Professor of Law, Seton Hall University School of Law; Robert H. McKinney Emeritus Professor of Law, Indiana University School of Law (Bloomington); Amelia Boss, Professor of Law, Temple University School of Law; Jean Braucher, Roger Henderson Professor of Law, University of Arizona, James E. Rogers College of Law; Ralph Brunbaek, Associate Professor of Law, Emory University School of Law; Mark E. Budnitz, Professor of Law, Georgia State University College of Law; Daniel J. Bumgarner, Professor of Law, UCLA School of Law; Marianne B. Culhane, Professor of Law, Creighton University School of Law; Susan DeJarnatt, Assistant Professor of Law, Temple University School of Law; Paulette J. Delk, Associate Professor of Law, Cecil Humphreys School of Law, The University of Memphis; A. Mechele Dickerson, Associate Professor of Law, College of William and Mary School of Law; Samuel J.M. Donnelly, Professor of Law, Syracuse University College of Law; Scott B. Ehrlich, Associate Dean and Professor of Law, California Western School of Law; Thomas L. Eovoldi, Professor of Law, Northwestern University School of Law; Jeffrey S. Feit, Professor of Law, Capital University School of Law; Wilson Freyermuth, Associate Professor of Law, University of Missouri-Columbia School of Law; James Cleo Greiner, Professor of Law, University of Kentucky College of Law; Nicholas Georgakopoulos, Professor of Law, University of Connecticut School of Law; S. Elizabeth Gibson, Burton Craig Professor of Law, University of North Carolina School of Law; Marjorie L. Girth, Professor of Law, University of Georgia School of Law; Karen Gross, Professor of Law, New York Law School; Matthew P. Harrington, Associate Dean for Academic Affairs and Director of the Intellectual Property Institute, Williams College School of Law; Joann Henderson, Professor of Law, University of Idaho College of Law; Richard A. Hesse, Professor of Law, New York University School of Law; Logan Michelson Hillinger, Associate Professor of Law, Boston College Law School; Margaret Howard, Professor of Law, Vanderbilt University Law School; Beth R. Hays, Associate Professor, Brooklyn Law School; Lawrence Kalevitch, Professor of Law, Nova Southeastern University Law Center; Allen R. Kamp, Professor of Law, John Marshall Law School; Lawrence P. King, Charles Seligson Professor of Law, New York University School of Law; Kenneth N. Klee, Acting Professor of Law, UCLA School of Law; John W. Lasillo, Nancy B. Professor, DePaul University College of Law; Robert M. Lawless, Associate Professor of Law, University of Missouri-Columbia School of Law; Laura L. LoPucki, Professor of Law, The Ohio State University Law School; Lois R. Lupica, Associate Professor of Law, University of Maine School of Law; William H. Luedtke, Professor of Law, University of Nebraska College of Law.

Bruce A. Markell, Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas; Nathalie Martin, Assistant Professor of Law, New Mexico School of Law; Judith L. Maute, Professor of Law, University of Oklahoma Center; Jeffrey W. Morrison, Professor of Law, University of Dayton School of Law; Stuart A. Neth, Professor of Law, Case Western Reserve University School of Law; Gary Neustadter, Professor of Law, Santa Clara University School of Law; Dean Pavlock, Professor of Law, Texas Tech University School of Law; Lawrence Ponoroff, Vice Dean and Professor of Law, Tulane Law School; William C. Recker, Professor of Law, University of Nebraska College of Law; Doug Rendleman, Hunterley Professor, Washington and Lee University School of Law; Alan N. Resnick, Benjamin Weintraub Professor of Law, Hofstra University School of Law.

Linda J. Rusch, Professor of Law, Hamline University School of Law; Charles J. Senger, Professor of Law, Thomas M. Cooley Law School; Charles Shafer, Professor of Law, University of Baltimore School of Law; Melvin G. Shimm, Professor of Law Emeritus, Duquesne University School of Law; Benjamin Weintraub Professor of Law, The State University of New Jersey, Rutgers School of Law (Newark); Marshall Tracht, Associate Professor of Law, Hofstra University School of Law; Bernard R. Trujillo, Assistant Professor, University of Wisconsin Law School; Valorie K. Vojilk, Assistant Professor of Law, Duquesne University School of Law; William T. Vukovich, Professor of Law, Georgetown University Law Center; Thomas Ward, Professor of Law, University of Southern California School of Law; Roger Williams, Leo Gottlieb Professor of Law, Harvard Law School; Jay L. Westbrook, Benno C. Schmidt Chair of Business Law, University of Texas School of Law; Thomas Wormald, Professor of Law, Creighton University School of Law; Mary Jo Wiggins, Professor of Law, University of San Diego School of Law; Peter Wintemute, Professor of Law, Southwestern University School of Law.
You can pass this legislation but I am not going to let you get by with that claim.

The truth is that notwithstanding the pleas of the bill’s proponents, this legislation does not help women and children. Thirty-five of the organizations that are opposed to promoting the best interests of women and children continue to oppose this pending bankruptcy bill. The concerns expressed in the proponents’ letter of September 7 regarding how S. 625 would hurt women and children have not even been addressed.

Reading from one other section of the letter:

We also express our concerns on behalf of the more than half a million women heads of household who will file for bankruptcy this year alone. As the heads of the economically most vulnerable families, they have a special stake in the pending legislation. Women heads of households are now the largest demographic group in bankruptcy and according to the credit industry’s own data, they are the poorest. The provisions in this bill, particularly the provisions that apply without regard to income, will fall hardest on them. Single mothers with dependent children who are hopelessly insolvent and whose income is far below the national median income will still have her bankruptcy case dismissed if they fail to make payments of income tax returns for the past three years— even if those returns are in the possession of her ex-husband. A single mother who hopes to work her way out of the payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as worn-out furniture or children’s clothes, even if it meant that successful completion of the repayment plan was impossible.

I don’t think the choice could be framed any more starkly. Here is the core question:

Will Senators be on the side of these women who are struggling to raise their families or do they see these women as the banks and the credit card companies do—as an economic opportunity, reduce the debt?

Mr. WELLSTONE. The letter begins:

In a letter to you, dated September 7, 82 professors of bankruptcy law from across this country expressed their grave concerns about some of the provisions of S. 625. In a public letter September 14, the professors took the opposing view. One of the principal concerns of the 82 law professors was that S. 625 may adversely affect women and children.

Proponents of the bill—namely, the consumer credit industry—have responded to the concerns raised about the effects of the bill on women and children with a media blitz. . .

They have the money for a media blitz. These women and children don’t have the money for that.

Mr. WELLSTONE. And I would say that “bankruptcy reform helps women and children.” A September 14 letter from the consumer credit industry issues proclaims that “S. 625 vastly improves the position of women and children who depend on family support payments from an absent parent who has filed for bankruptcy.” A full-page advertisement also dated September 14 asserts, “The truth is that bankruptcy reform gives much-needed help to working families, and the low-cost, basic banking amendment, which would require big banks with more than $200 million in assets to offer lower-cost, basic banking services to customers if they wish to be able to make claims against the debtors in bankruptcy proceedings. I think that would make the legislation at least a little bit more fair and balanced.”

First, let me speak to my payday loan amendment. This is one that should have the vote of 100 Senators. This amendment would prevent claims in bankruptcy on transactions in which the annual rate exceeds 100 percent. That is what I am going to ask Senators to vote on. We would prevent claims in bankruptcy on transactions in which the annual rate exceeds 100 percent—such as payday loans and car title pawns. Now, these loans are marketed as giving the borrower “a little extra until payday.”

Do you know what happens with these loans? It is incredible. You have hard-pressed people, poor people, senior citizens, women, people of color, people who live in our rural and urban areas, and they can’t get the credit any other way, so they get a loan for $100, which will hold them over until they get their next paycheck. They pay back this huge $15 fee—15 percent more. These credit companies, unscrupulous companies, can put a lien on their car and even require that they give the key to the car, and then when they can’t pay back the loan, which is normally 10 percent of their income, they just keep rolling the loan over and over again.

For example, a 15 cent 2-week loan of $100 ends up being an annual rate of about 391 percent because people ask for the loans over and over again. Rates can be as high as 1,000 percent per year, or they take title to the car.

This is absolutely incredible. Someone can take out a $100 loan, and the car might be worth $2,000, and these companies that we don’t do a darn thing about— I know some of the national media has had some exposure, thank God. I just hope the Senate is sensitive to this question. They are hard-pressed people with nowhere to go for a $100 loan. Maybe there has been a bankruptcy, or the car broke down, or whatever the case is. They end up getting charged 300, 400, 500, 600 percent. Then they get harassed and they say: We have the check you made out to us. We are going to cash the check and you will be charged with writing a bad check and you can go to prison. These are unscrupulous practices. If the car is worth $2,000, they can basically repossess the car, sell the car, and in a lot of States they don’t have to give you anything. They own anything that they make over what the owner owed them. Can you imagine that that goes on in this country? Why in this “bankruptcy reform” legislation do we not at least pay a little bit more attention to how we can protect some of our consumers of these huge fees? What are the concerns raised about the effects of the bill on women and children?
storefronts making payday loans in 1999 across the country but estimates the potential "mature" market as being 24,000 stores nationwide generating $6 billion in fees. With these kinds of profits, only your conscience will keep you out of this business.

With these kinds of profits, only your conscience will keep you out of this business. It is amazing. You make these loans, you say you are going to help them out of them, you charge them fees, and you roll it over and over again. You end up charging way above 100 percent per year. You repossess their car. You sell the car. You don’t even give them back the additional money you make because the original amount they owed you. You do all this with impunity, and these are the poorest people, most vulnerable people who are targeted, and we don’t have anything in this legislation to protect them. Let me tell you, Senators, if you want to protect them, you will and you should vote for this amendment.

I say to my colleagues that these sleazy debt merchants, expanding their tentacles and taking profits at the mirror image of the retreat of our Main Street and mainstream financial institutions from the same communities. Some of my colleagues on the floor know this. When we had our community banks and smaller banks, they cared. They helped small businesses out and helped out hard-pressed people. They were willing to help out. But now that we have moved to these branch banks, they have cut this consolidation, they don’t. So people have to rely on these kinds of loans.

According to an analysis by the brokerage firm Piper Jaffrey, as reported in the Wall Street Journal, “established customers” of one payday lender engaged in 11 transactions a year and could end up paying $165 to $330 for a $100 loan.

This vote is going to be watched. This is why I think national media will pay attention to because we have had some horror stories. We know about what has happened to people. The question is, Whose side are we on? Are we on the side of vulnerable people on the side of single-parent households headed by women, on the side of children, or are we on the side of these unscrupulous credit card companies?

The following June 10 New York Times story describes the horror stories associated with payday lending:

Shari Harris, who earns around $25,000 a year as an information security analyst, was managing money enough until the father of her two children, 10 and 4, stopped paying $1,200 in child support. “And then,” Ms. Harris said, “I learned about the payday loan places.” She qualified immediately for a two-week $150 loan at Check Into Cash, handing it a check for $138 to include the $3 fee. “I started maneuvering my way around until the end of them,” she said. After six months, she owed $1,900 and was paying fees at a rate of $6,000 a year. “That’s the sickness of it,” Ms. Harris said. “I was in a hole with nowhere to start. I had to figure out a way to get out of it.”

Mr. President, here is where we are. If you have desperate customers—the most vulnerable—and these are the kinds of loans they are dependent upon, where the terms are outrageous—only somebody with no alternative would seek to borrow money at such scandalous rates.

The Consumer Federation of America noted in a September 1999 report entitled “Safe harbor for Usury” that, quote:

Consumers who are desperate enough for credit to pay triple digit interest rates for two weeks, would not have the market power to bring rates down. The real costs of payday loans made in small sums for very short periods of time may not be clear to uninformed consumers. Lenders calculate that their cash advances are ‘loans’ and fail to comply with Truth and Lending Act disclosures of Annual Percentage Rates. Consumers do not have the key price tag needed to comparison shop for credit. If, as the industry claims, payday loan customers have nowhere else to go for small loans, rate regulation is necessary to prevent abuse of a captive market.

That is what is going on. The industry is saying to Senators: Oh, no, you can’t do anything about this because these people who are desperate come to us for loans and we perform a vital service. But does that justify scandalous fees? On the contrary, it justifies stringent regulation to protect the most vulnerable citizens. What are we about if we cannot at least extend this kind of protection? If it is poor credit which drives a borrower to a payday lender, the borrower is likely to find himself in still deeper water after taking one of these high interest loans. For example, in Tennessee—the state with the highest bankruptcy rate in the country—payday lending is becoming an increasing problem for the bankruptcy system. As one Chapter 13 bankruptcy trustee, as quoted in the March 18th edition of The Tennessean put it, quote:

I see them (payday lenders) as the last straw. I would certainly say they are compounding the problem. We are dealing with a bankruptcy that is through the roof. You are looking at one of the basic causes: lending to people who are not credit worthy and extracting exorbitant interest rates from them.

Why aren’t we doing something about this? This amendment says if you have a 100-percent interest charge over a year, you are not at the table when it comes to bankruptcy, and the collections of these payday loans can be coercive.

For example, in September, the Cook County, Illinois State’s Attorney filed suit against Nationwide Budget Finance, a St. Louis based payday lender, alleging multiple violations of Illinois Consumer Installment Loan Act and Consumer Fraud Act, charging that Nationwide threatened consumers with criminal charges and lawsuits when it had no intention of taking such action. The State’s attorney stated, quote: “Apparently, payday loan businesses such as this one has not been cost-effective to write off bad debts rather than to try and collect them, even though they harass and intimidate their customers.”

Additionally, the company required borrowers to list four references on the loan application. But the references weren’t used for the loan approval, instead Nationwide would place harassing to the people listed if the borrower defaulted.

That is why this amendment amends the Fair Debt Collection Practices Act to prohibit coercive collecting tactics in lending transactions where deferred cashing of a check is involved.

Consider that, Why should we penalize some of our good companies that are responsible lenders by letting these usurious loan sharks be at the table? Why should unscrupulous lenders have equal standing in bankruptcy court with a community banker or a credit union that tries to do right by their customers? And lenders should not be able to take advantage of their customers’ vulnerability through harassment and coercion.

That is what this amendment is about.

Mr. President, my amendment simply says: if you charge over 100% annual interest on a loan, and the borrower goes bankrupt, you cannot make a claim on that loan or the fees from the loan.

Colleagues, you have such a clear choice. There is no reason in the world that you should not vote for this amendment.

I grant you that I come to the floor today to speak for some people who haven’t been included in the system. They are just poor and they are vulnerable, and therefore they are fair game for these companies.

I have just said to you that my amendment says: if you charge over 100 percent as an interest rate and the borrower goes bankrupt, you cannot make a claim on that loan or the fees from the loan.

Why don’t we make the legislation just a teeny bit fairer? Why don’t we have just a little bit more balance? Why don’t we go after these unscrupulous operators?

The second amendment I’ve offered on this bill is my low cost, basic banking amendment. This important consumer protection would stop national banks with more than $200 million in assets to offer low-cost basic banking services to their customers if they wish
to be able to make claims against debtors in bankruptcy proceedings.

We have been talking about responsibility. What about the responsibility of the banks and the lending institutions to offer inexpensive means to conduct financial transactions and to save money for low-income people?

Right now, the minimum balance that people are supposed to have in their accounts and the high fees mean that for 12 million Americans, they can’t afford to open up an account; they can’t afford to have a checking account. What happens when people can’t afford to open up a checking account? They are forced to complete their financial affairs either through costly cash-cashing operations or they carry around whatever sums of money they have when they go out to purchase groceries or to pay their rent. These are risks that people should not have responsibility; you ought to at least give people low-cost basic bank services. If you do not, then you are not at the table in bankruptcy proceedings against such a bank.

We have been passing legislation that has closed banks out, that has led to all of these mergers and acquisitions, with these huge branch banks making billions and billions of dollars. All I am saying is, why can’t we at least say to them: You have some responsibility; you ought to at least give people low-cost basic bank services. If you do not, then you are not at the table in bankruptcy proceedings against such a bank.

This bill focuses on banks with more than $200 million. I want to be crystal clear that I am not talking about the smaller banks because the smaller banks have done a good job. Much of my work is in rural America. The smaller banks and the community banks have done a good job. They go out of their way to help. But the problem is that these small community banks that have been connected to Main Street have been connected by these large conglomerates that are much more connected to Wall Street. They don’t really know the people. They don’t know them at all. They sure as heck don’t go out of their way to help them.

Would this amendment present an unfair burden to these larger banks, as some of my colleagues may argue? Not according to a survey of the Consumer Bankers Association. According to the CBA, 70 percent of the institutions found that offering a basic bank account did not result in a financial loss for their bank or impose a burden on their operation.

What in the world is going to happen to seniors? What is going to happen to low-income elderly people? As the U.S. Government begins to make the shift to electronic distribution of benefits, pensions, and wages, consumers must have access to them. Now more than ever, the 6.5 million recipients of Social Security and SSI, the Supplemental Security Income program, who do not have a checking account, will face even a steeper uphill battle than these these Social Security recipients. They currently cannot afford the monthly fees, nor do they have the money to keep the minimum balance in their checking accounts necessary to complete these financial transactions.

What are we saying to senior citizens who in the future will need a bank simply to get their electronically transferred Social Security check? Let’s not forget that it is not just the financial giants that are affected by this process of balkanizing our country. We should not try to close the door to low-income consumers who desperately need access to basic banking services. If we provide wider access to bank accounts, we will reduce bankruptcy, we will provide additional relief to the elderly, and we will reduce low- and moderate-income families’ reliance on high-cost check cashers and payday lenders.

Why should bankers who are unwilling to promote the general good be given the same standing in bankruptcy court as those who do? I am tired of seeing the folks in the private sector who do the right thing being put at a competitive disadvantage because their competitors will not.

I will conclude by characterizing the debate this way: Over the past several decades, our economy has become more and more balkanized. We have, indeed, seen an economy that is booming. But I come from a State where we have had an economic downturn. It is hurting farmers and our rural citizens are falling behind. The U.S. economy is becoming more and more balkanized. More wealth and more economic power is concentrated among a few. What we have been doing in the Senate over the past several years is passing legislation which provides the lion’s share of benefits for those at the top of the heap, those with the big bucks. The two amendments I have introduced, what we introduce in this way, in a small way, to reverse this trend.

This bill is already an enormous giveaway to the financial services industry. It basically rewards lenders for their aggressive, irresponsible lending habits. I went over that already. So I say to colleagues, since we seem to be on our way to changing the rules for America’s working families with this legislation, since we seem to be about to ratify the scandalous lending practices of the banking industry, let the benefits that these banks get now balances this legislation. Both of these amendments test whether we are serious about curtailing bankruptcy. These two amendments, the payday loan amendment and the lifeline banking amendment, are antibankruptcy amendments. A vote for either of these amendments is a vote to promote responsible financial habits among consumers and responsible lending from the credit card companies—responsible lending from the credit card companies. A vote against these amendments sanctions the abandonment by big banks of poor people and, increasingly, the predatory practices of the stranglehold that unscrupulous lenders have on low-income and moderate-income and working families. There is no doubt in my mind this is a flawed piece of legislation. It punishes the vulnerable and rewards the big banks and credit card companies for their own poor practices.

Earlier I used the word ‘‘injustice’’ to describe this legislation. That is exactly right. It will be a bitter irony if the creditors are able to use a crisis, the current crisis of their own doing, to convince Congress to reduce borrowers’ access to bankruptcy relief. That is exactly what is going on.

I said at the beginning of my statement that real bankruptcy reform does not address the balkanization of the financial markets, which are increasing the power and clout of the big banks and credit card companies to unprecedented levels. It would make working families more desperate. It would deal with the crisis in agriculture and what is happening in rural America. It would address skyrocketing medical expenses. It would confront the economic balkanization of the country. It would confront the increasing chasm between the wealthy and the rest of America.

But instead of lifting up low-income and moderate-income and working-income families, this bill punishes them. I hope my colleagues reject this legislation. I strongly urge the Senate to at least provide some balance to this legislation and to accept my amendments.

I have also a document from the Department of Labor, written by an officer, Capt. Robert W. “Andy” Andersen, and I believe this was written to Senator Lieberman. In this letter, he is talking about these payday loans.

What in the world is going to happen to seniors? What is going to happen to low-income elderly people? As the U.S. Government begins to make the shift to electronic distribution of benefits, pensions, and wages, consumers must have access to them. Now more than ever, the 6.5 million recipients of Social Security and SSI, the Supplemental Security Income program, who do not have a checking account, will face even a steeper uphill battle than these Social Security recipients. They currently cannot afford the monthly fees, nor do they have the money to keep the minimum balance in their checking accounts necessary to complete these financial transactions.

What are we saying to senior citizens who in the future will need a bank simply to get their electronically transferred Social Security check? Let’s not forget that it is not just the financial giants that are affected by this process of balkanizing our country. We should not try to close the door to low-income consumers who desperately need access to basic banking services. If we provide wider access to bank accounts, we will reduce bankruptcy, we will provide additional relief to the elderly, and we will reduce low- and moderate-income families’ reliance on high-cost check cashers and payday lenders.

Why should bankers who are unwilling to promote the general good be given the same standing in bankruptcy court as those who do? I am tired of seeing the folks in the private sector who do the right thing being put at a competitive disadvantage because their competitors will not.

I will conclude by characterizing the debate this way: Over the past several decades, our economy has become more and more balkanized. We have, indeed, seen an economy that is booming. But I come from a State where we have had an economic downturn. It is hurting farmers and our rural citizens are falling behind. The U.S. economy is becoming more and more balkanized. More wealth and more economic power is concentrated among a few. What we have been doing in the Senate over the past several years is passing legislation which provides the lion’s share of benefits for those at the top of the heap, those with the big bucks. The two amendments I have introduced, what we introduce in this way, in a small way, to reverse this trend.

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lenders who are making billions of dollars. I think we ought to be on the side of these men and women in our military who are confronted with this.

But you know what, I am not going to use this as the big emotional argument. It is not the big emotional argument. It is not the big emotional argument that has made; otherwise, we would not have had a great deal of passion and conviction.

For those ideas. Senator WELLSTONE is right or wrong, he always speaks with a great deal of passion. I want people who have ideas to have passion for those ideas. Senator WELLSTONE is a person who speaks with a great deal of passion and conviction.

I disagree with a lot of the points he has made; otherwise, we would not have this legislation before us. On the other hand, on the subject of concentration, which he brought up, I have some sympathy for what he has said. The solution to the concentration problem is we should get this administration to vigorously enforce the anti-trust laws both within the Justice Department and the Federal Trade Commission.

There is a general feeling among people about whether the marketplace is working adequately and, consequently, support the antitrust laws—and I am going to focus on the payday amendment. We are saying it has to be a new day. We are saying it has to be a new day. We are saying it has to be a new day.

The PRESIDING OFFICER (Mr. HATCH). Who seeks recognition? The Senator from Iowa.

Mr. GRASSLEY. Mr. President, it is always a pleasure to listen to the Senator from Minnesota because whether he is right or wrong, he always speaks with a great deal of passion. I want people who have ideas to have passion for those ideas. Senator WELLSTONE is a person who speaks with a great deal of passion and conviction.

We also have the bad example set by the Federal Government of 30 years of deficit spending. If Uncle Sam can borrow money into the trillions of dollars over a period of 30 years, isn’t it all the more a reason for Mary Smith and Tom Jones or the people who are working in Anywhere USA to go into debt as well? Uncle Sam did not set a very good example. Congress, doing the fiscal policy for Uncle Sam, did not set a very good example. It says to others: Yes, it’s OK for you to go in debt.

The Federal Government has turned that around in 3 years by balancing the budget and paying down some of the national debt and is on the road to paying down the national debt very dramatically over the next 10 to 15 years. We also have a situation where somehow financial responsibility is not considered a personal responsibility anymore. In other words, it is OK to go into debt and not pay your bills. There used to be a certain amount of shame connected with bankruptcy that does not seem to be there now.

I give four reasons—and there may be a lot more—of why we are probably in this situation where we have had 18 years of economic expansion since the second year of the Reagan administration and yet have a historically high number of bankruptcies, and during the best years of our economy, we have seen bankruptcies almost double in a period of 6 or 7 years.

Consequently, we have this legislation before us. I do not disregard the words of the Senator from Minnesota, that there are some people who are vulnerable and for whom we need to be concerned, but I say to the Senator from Minnesota, we are not extinguishing the principle that has been a part of the bankruptcy law for the last 102 years, permanent bankruptcy legislation. There are segments of our population in bad financial trouble, through no fault of their own, who need the help of bankruptcy. That could be death, divorce, a lot of medical expenses, a natural disaster, if you are a farmer or some other small businessperson, or maybe even a homeowner who had a natural disaster that was not properly insured.

Our code says there are select groups of people who are in a bad financial situation, through no fault of their own, who should have a fresh start. I say to the Senator from Minnesota and all the other Senators who question this legislation, we keep that principle, but we also say this Congress has to send a clear signal to the 270 million people in this country that if you have the ability to repay some or all of your debt, you are not going to get off scot-free, albeit they may be a minority, but they are a significant minority, and it does not set a very good example for some people to be able to use the bankruptcy code as part of financial planning.

We are saying it has to be a new day. We are saying it has to be a new day. We are saying it has to be a new day.
We find that the 1978 law, obviously, has contributed some to the big increase in bankruptcies. This legislation passed by a very wide margin. So I do not think it was intended that the 1978 law ought to make it easier to go into bankruptcy. But, obviously, it sent that signal to a lot of people in America, as we have seen that the number of bankruptcies in 1980 was only 331,000 and now 18 years later, in 1998, the figures are 1,442,000.

Something has happened recently. Again, I do not pretend to stand before the American people, or my colleagues in the Senate, and say passing a law is going to solve all these problems. I wish it would. It is going to be a combination of several things: the credit card companies or credit-granting companies to be more careful in who they grant credit to; a Congress to be financially responsible and, hence, set a good example for every taxpayer and citizen in this country that debt isn’t OK; the bankruptcy bar to be a little more careful about encouraging people to go into bankruptcy and not to advertise that bankruptcy is OK as a way out; and then the law itself, by discouraging people who can repay to use the bankruptcy code for financial planning.

In this whole process, I hope we then enhance personal responsibility. By enhancing personal responsibility, then we can reduce these numbers of bankruptcies and then reduce the economic problem we have—because we are not talking about something that does not make an impact upon everybody.

Some people have put this at a $40 billion problem—$40 billion owed by those who go into bankruptcy and do not pay. Then every other consumer in America picks up part of that tab. We have no doubt about it, if you are shoplifting, the honest consumer, who does not shoplift, is going to pay the cost of shoplifting. If you are a businessperson, and somebody does not pay their bills by declaring bankruptcy, the honest person buying goods from that business is going to pick up the tab. And $400, on average, for a family of four, is what we pay for other people who do not pay.

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We hope to enhance personal responsibility. We hope to help the economy in the process. But most importantly, this is something that must be dealt with, and I think this legislation deals with it.

That is the background for this legislation. I think it is necessary to give some of that background, as I respond to some of the specific issues that the Senator and his colleagues brought up.

First of all, he mentioned the point that there has been some decline in the rate of growth of bankruptcies in recent years. We think that is true. It is a little hard to tell exactly why that is true. If we look at the number of bankruptcies in 1998, there are about 1.3 million business filings and about 14 million personal filings. So we have a total of 1.5 million filings. In 1997, there were about 1.6 million filings. So we have a very modest decline. One of the reasons for the decline is that people are coming out of bankruptcy in 1998 because of the higher interest rates. So we have seen a dramatic increase in bankruptcies in 1998 compared to 1997. In 1998, there were about 1.4 million business filings and about 14 million personal filings. So we have a total of 1.5 million filings. In 1997, there were about 1.6 million filings. So we have a very modest decline. One of the reasons for the decline is that people are coming out of bankruptcy in 1998 because of the higher interest rates. So we have seen a dramatic increase in bankruptcies in 1998 compared to 1997.

If you look at the historical data, you see that bankruptcies have gone up dramatically since 1980. The number of bankruptcies in 1980 was about 861,000. In 1998, the number of bankruptcies was about 1.4 million. So we have seen a very dramatic increase in bankruptcies since 1980. The number of bankruptcies in 1980 was about 861,000. In 1998, the number of bankruptcies was about 1.4 million. So we have seen a very dramatic increase in bankruptcies since 1980.

We have found that the 1978 law, obviously, has not worked at all, regardless of its good intentions. Because under the 1984 legislation, creditors are banned by law from bringing evidence of abuse to the attention of the judge.

However, we have a law that says if there is substantial abuse of the bankruptcy code, then the judge can determine that that certain bankrupt does not have a right to be in bankruptcy court. But then we have another section that says creditors who might know about that abuse cannot bring evidence of that abuse to bankruptcy court.

So it seems that the 1984 legislation was designed not to work. We correct that in this legislation by making it possible for people to bring evidence of such substantial abuse to the bankruptcy judge, for it to be considered, and if the judge agrees, then that person cannot continue to abuse the public at large by making misuse of the bankruptcy courts to get out of paying debt.

I also remember the Senator saying that tightening bankruptcy law will not reduce the costs of bankruptcy. All I can say is, the Clinton administration’s own Treasury Secretary, Larry Summers, said in one of his hearings that reducing bankruptcies could help reduce interest rates. And what helps lower-income people more in America than reducing interest rates? It really helps the very people the Senator from Minnesota speaks of as being vulnerable and as a class of citizens about whom we should all have concern, and I believe all do have concern.

I have an example of a vulnerable person at the other end, a person who has been substantially harmed by somebody who went into bankruptcy. It isn’t just people who go into debt who are vulnerable and can be hurt by bankruptcy; there are a lot of other people who get hurt by other people who go into bankruptcy. I hope this body will remember that every abusive bankruptcy hurts scores of Americans.

I will read, without using names, from a constituent in Keokuk, IA, writing to me about the need for the passage of this legislation. She had read a headline in the local paper that said: The Senate may toughen bankruptcy laws.

‘‘Son’’—I will not use the name—“works for a local electric company as a meter reader full time during the day and then goes right to work nearly every evening and on Saturdays with his own growing washing, vacuuming business. He works so hard to do a good job for his customers. He takes his responsibilities as a father of five very seriously. During the last 3 to 4 months, he has been doing a job for an out-of-town gentleman. ‘‘Then the last news I gave ‘I believe he is in the Des Moines area. I have learned that he has several businesses and is known to be a crook.’’ That is why I don’t want to use the names; I don’t know whether.
concerned about because, in his words, "they are so vulnerable." People who use payday loans simply can't get credit through normal channels because they are too risky, so a payday loan may be the only way they can get quick cash to pay for family emergencies or essential home and auto repair.

I know the intentions of my good friend from Minnesota are honorable, but the effect of this amendment would be to make it harder for poor people to get help when they need that help the most. I hope this amendment by the Senator from Minnesota will be defeated.

I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I rise to speak in opposition to the amendments offered by the distinguished Senator from Minnesota. His amendment is, in fact, two amendments—one to the bankruptcy laws and one to the Fair Debt Collection Practices Act. The debt collection amendment would prohibit anyone, such as a grocery store or a hotel, who cashes

Finally, I wish the Senator from Minnesota had at least mentioned title II, subtitle A, which is entitled: Abusive Creditor Practices. We know creditors can be abusive, and we address that problem to make sure there is a level playing field between creditors and debtors when it comes to the bankruptcy courts. We have numerous new consumer protections. Understand, there are some customers who don't want to go into bankruptcy, and they try to negotiate with their creditor to avoid going to court. That is a good step we want to preserve and encourage. But if that customer then has to declare bankruptcy because of not being able to negotiate, then the creditor is severely limited in his ability to collect that debt. To me, this is real consumer protection that should not be forgotten as we vote on this legislation.

I will now turn to a specific amendment the Senator from Minnesota is offering as well and to oppose his amendment that is referred to as the payday loan. For those who don't know, this type of loan happens when a borrower gives a personal check to someone else and that person gives the borrower cash for an amount less than the amount of the personal check. The check isn't cashed if the borrower redeems the check for its full value within 2 weeks. The fact is that payday loans are completely legal transactions in many States. If a financial transaction is explicitly legal under State law, to me, it isn't wise that we use the bankruptcy code to try to undo that transaction.

First of all, using the bankruptcy code for this purpose leads to perverse results because the only people who will receive any benefit or relief will be those who file for bankruptcy. Then you have all those other people who are using payday loans who never file for bankruptcy. The people who have taken out loans but don't take the easy way out in bankruptcy court will still have to pay back their loan. So if this is a problem, it seems to me the Senator from Minnesota ought to work to help everybody, not only those who go into bankruptcy court. Then you also have the perverse result of people who don't have the money to file for bankruptcy who will have to pay the loan as agreed. Even if you share Senator WELLSTONE's concerns about who payday loans, this amendment won't benefit the poorest of the poor because most of the poorest of the poor don't seek bankruptcy relief.

Earlier during the course of the debate, my colleague from Utah, Senator HATCH, sought to include language in an amendment that would have changed the Fair Debt Collection Practices Act. This act is in the jurisdiction of the Banking Committee. At that very time, the ranking Democrat on the Banking Committee, the Senator from Maryland, indicated that he would not consent to allowing changes to the Fair Debt Collection Practices Act on a bankruptcy bill. So to be fair, then, the portion of Senator WELLSTONE's amendment changing the Fair Debt Collection Practices Act should be stricken out in deference to the jurisdictional objections that have been lodged by our banking Democrat on the Banking Committee. Sen. I am asking Senator WELLSTONE to listen to the arguments of his fellow Democrat about jurisdiction and respect the jurisdiction of the particular committees.

If the Senator from Minnesota doesn't want to honor this objection, I think his proposed changes to the Fair Debt Collection Practices Act represent poor policy at least. His amendment would not say that lenders can't offer payday loans. His amendment would say that you aren't allowed to use State courts to collect the debt, even if the debt is completely legal under that same State law. In fact, the State of Minnesota specifically allows payday loans, as does the State of Iowa. I don't think the Federal Government has any business telling State judges they can't enforce debts that are fully legal under the laws of that particular State. I would have confidence in my State legislature correcting this economic and social problem, if it is one in our State. I haven't studied it enough to know whether it is, but I have confidence that my State legislators would correct that. I hope the Senator from Minnesota has the same confidence that his State legislators know what is best for Minnesota, not those of us in the Congress of the United States.

I also think this amendment would have the effect of making it harder for the poor and those with bad credit histories to gain access to cash—the very people the Senator from Minnesota is so concerned about because, in his words, "they are so vulnerable." People who use payday loans simply can't get credit through normal channels because they are too risky, so a payday loan may be the only way they can get quick cash to pay for family emergencies or essential home and auto repair.

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The debt collection amendment would prohibit anyone, such as a grocery store or a hotel, who cashes
checks for a fee and defers depositing the check from notifying the writer of a check which is later bounced that they will seek civil or criminal penalties for that bounced check. It is important to keep in mind that under most State laws writing bad checks is a crime, and many States allow for civil and/or criminal penalties against those who write fraudulent checks.

The other part of this amendment would disallow in bankruptcy claims arising from deferred deposit loans—a so-called payday loan—if the annual percentage rate of the loan exceeds 100 percent.

Although well intentioned, this amendment is misplaced. So-called payday loans are made when a borrower writes a check for the loan amount plus a fee. The lender typically gives the borrower the loan amount and holds the check until a future date. In making payday loans, these lenders provide a vital service to the poorest borrowers. Sometimes it is more convenient to go to a hotel, grocery store, gas station, or other similar businesses that may keep longer hours than banks, many consumers choose to cash a check at these types of places when they need a cash advance or giving up their money to overcome an emergency. With this check cashing service, borrowers can get the emergency cash they need without telling the boss they need a cash advance or giving up their televisions and furniture. This is a life-saving service to the poorest borrowers who pay these high fees are those with particularly limited ability to repay the loan, including enlisted military personnel, college students, and senior citizens on fixed incomes.

The problem with renewals is that you can borrow money using his or her future paycheck as security. The borrower writes a check for the loan amount plus a fee, and then the lender agrees not to cash the check until after the borrower's next paycheck as security. The borrower loses the right to the funds back and calling it a new loan. There is no incentive to limit renewals/rollovers, you have the option to continue to collect fees as long as the customer pays the principal and interest charge in two weeks, is not going to help consumers who do not have the cash to cover the checks they write. (emphasis added)

The lifeline account amendment would disallow the bankruptcy claims of certain banks and credit unions. In particular, it would disallow claims against larger institutions, such as banks with more than $200 million in aggregate assets that offer retail depository services to the public, unless they offer the specific services required by this amendment. First, these institutions would be required to offer both checking and savings accounts with "low fees" or no fees at all. Second, they would have to offer "low" or no minimum balance requirements for checking accounts—and to the consumer, regardless of income level. Further, the "penalty" for not providing these particular services is the disallowance of the bank's claim in bankruptcy. That is a harsh penalty, indeed, and a windfall for bankrupts.

Let me explain what this means. It means someone with the resources of, let's say, Steve Forbes can walk into one of these banks, and if he is denied a "low fee" or no fee account, then any claim that bank has in any bankruptcy proceeding—just Steve's bankruptcy—then the bank's claims are disallowed. I emphasize that any claim in any bankruptcy will be disallowed because the bank did not offer Steve Forbes a "low" or no fee checking account. Let me substitute Bill Gates' name for Steve Forbes here.

I should also note that this amendment does not describe what a "low" fee is. Will a "low" fee be defined as a "low" interest rate? I am at a loss to describe this. Let me substitute "no fee" account. Are we to base this dictated fee on? This is bad policy that would effectively dictate to banks the specific services they must offer, whether or not consumers need or want them. This is not Government interference with the markets at its worst. Whenever such rules are forced on businesses, the offsetting costs inevitably occur. In other words, consumers will end up paying for mandated low fee or free checking in the form of higher prices for other services. Alternatively, other services by banks may be discontinued to offset the costs of these new requirements, not to mention the costs of the penalties. I don't believe this kind of regulatory interference with the markets is either shareable or shareable.

In making payday loans, these lenders provide a vital service to the poorest borrowers. Sometimes it is more convenient to go to a hotel, grocery store, gas station, or other similar businesses that may keep longer hours than banks, many consumers choose to cash a check at these types of places when they need a cash advance or giving up their money to overcome an emergency. With this check cashing service, borrowers can get the emergency cash they need without telling the boss they need a cash advance or giving up their televisions and furniture. This is a life-saving service to the poorest borrowers who pay these high fees are those with particularly limited ability to repay the loan, including enlisted military personnel, college students, and senior citizens on fixed incomes.

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And that's not the worst of it: state efforts to control rollovers appear to be failing; lenders and customers find any number of ways to roll over a loan, even if rollovers are limited or prohibited. The Illinois Department of Financial Institutions has concluded that rollover rules have "been ineffective in stopping people from converting a short term loan into a long term headache." At the forum, Mark Tarpey, State Credit Administrator Supervisor with the Indiana Department of Financial Institutions, testified:

The problem with renewals is that you have an incentive for the lender to continue to collect fees as long as the borrower pays them. There is no incentive to limit renewals/rollovers. Even if you statute prohibit or limit renewals/rollovers, you have the problem of a customer coming in and paying cash and the lender then giving them the same funds back and calling it a new loan. There are other practices to conceal transactions from being deemed a renewal/rollover.

The industry acknowledges that loan renewal is a problem, although there is dispute over just how big a problem it is. Both of the trade associations represented at the forum I held in December have adopted "best practices" guidelines that attempt to address this issue, but because the borrower drives the decision to renew a loan, it would be difficult for the industry guidelines to succeed.

Equally disturbing are the practices that some in the payday industry have used to collect on delinquent loans— and I recognize and appreciate that the
amendment offered by the Senator from Minnesota addresses this problem. At the forum in December, Leslie Pettijohn, the Consumer Credit Commissioner in Texas, testified:

From a regulator's perspective, one of the most significant practices of the payday lenders is the threat of criminal prosecution against the consumer. When a check bounces, lenders frequently file charges against payday lenders and lose enforcement officials and attempt to collect this debt by means of criminal prosecution. In a single precinct in Dallas County, more than 13,000 of these charges were filed by these kinds of companies in one year.

As I mentioned, payday lending uses as security a live check that both the borrower and the lender know is no good at the time it is written. Just as we don't imprison people for failure to pay their rent or to maintain their mortgage payments, I do not believe that a borrower—unless he committed fraud—should be subject to threat of such severe measures for failure to make good on a payday loan, particularly because the very premise of the loan was the borrower’s willingness to write a bad check. The amendment offered by the Senator from Minnesota would prevent the misuse of these “bad check” laws, but it would still permit a fraud prosecution where appropriate. That is an important step.

Again, I thank the Senator from Minnesota for raising this important issue, and I look forward to working with him to address it further in the future.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded as follows:

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

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

The PRESIDING OFFICER. Under the previous order, the next amendment has 2 hours equally divided.

The Chair recognizes the Senator from Michigan.

Mr. LEVIN. I thank the Chair.

AMENDMENT NO. 2656

(Purpose: To provide for the nondischargeability of debts arising from firearm-related debts, and for other purposes.)

Mr. LEVIN. Mr. President, I call up amendment No. 2656.

The PRESIDING OFFICER. The clerk will report the bill clerk read as follows:

The Senator from Michigan (Mr. LEVIN) for himself, Mr. DURBIN, Mr. WYDEN, Mr. KENNEDY, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER proposes an amendment numbered 2656.

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

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

The amendment is as follows:

On page 124, between lines 14 and 15, insert the following:

SEC. 11. CHAPTER 11 NONDISCHARGEABILITY OF DEBTS ARISING FROM FIREARM-RELATED DEBTS.

(a) In section 1141(d) of title 11, United States Code, as amended by section 708 of this Act, is amended by adding at the end the following:

"(B) the perfection or enforcement of a judgment or order referred to in subparagraph (A) against property of the estate or property of the debtor."

Our amendment would change the bankruptcy code so that a firearm manufacturer or distributor who is found liable or may be found liable for negligence or reckless action cannot escape accountability by filing for reorganization in bankruptcy.

Our amendment has the endorsement of the National League of Cities, the U.S. Conference of Mayors, the Handgun Control, Inc., which is Sarah Brady's organization, the Gun Policy Center. The amendment is cosponsored by Senators DURBIN, WYDEN, KENNEDY, FEINSTEIN, LAUTENBERG, and SCHUMER, and I thank them for their persistence and their hard work on this important issue.

Under the current bankruptcy code, firearm manufacturers are able to “take advantage of the system.” Those are not my words. Those are the words of Lorcin Engineering Company, a manufacturer of cheap, semiautomatic handguns. Lorcin told Firearms Business, an industry publication, that it was “taking advantage of the system” by filing for chapter 11 bankruptcy protection in 1996. At the time, Lorcin was one of the chief producers of Saturday night specials or junk guns. Their semiautomatic pistol was number two on the Alcohol, Tobacco, and Firearms list of guns traced to crimes. Some of their cheaply constructed guns were made so poorly they did not meet basic safety requirements to be eligible even for import.

Lorcin sought to evade responsibility for the damages caused by their negligence by filing for chapter 11. Other manufacturers are following their lead, seeking to evade accountability for their wrongdoing by filing in bankruptcy court. For instance, Davis Industries, another producer of poorly constructed semiautomatic firearms, also sought protection in bankruptcy court.

The New York Times reported on June 24, 1999, that a spokesman for Davis Industries said, “I’m sure other companies will do the same thing.”

On July 19, 1999, at a creditors meeting for Davis Industries, the owner was asked a few questions by the bankruptcy trustee according to chapter 11 bankruptcy petition.

Question: Now, the reasons for filing sounded more like you’re getting sued by all the municipalities in the United States. Is that pretty close to correct?

Answer: I think you hit the button on the nose.

Lorcin Engineering and Davis Industries found a loophole in our Federal bankruptcy law and the list of these companies grew and is still growing. When the bankruptcy code was enacted, its primary objective was debtor rehabilitation, to provide a fresh start to “honest but unfortunate debtors” through the discharge of debts. The code gives debtors the opportunity to shed indebtedness, but there are exceptions. These exceptions to the discharge of a debtor’s liability were based on public policy or wrongful conduct of the debtor. Currently, the bankruptcy code defines 18 specific categories of debt that are nondischargeable. These exceptions have been created because of an overriding public purpose.

A report issued by the National Bankruptcy Review Commission, an independent commission established by Congress to investigate and study issues relating to the bankruptcy code, says this about nondischargeability:

Debts excepted from the discharge obtain distinctive treatment for public policy reasons. Many nondischargable debts involve "moral turpitude" or intentional wrongdoing. Other debts are excepted from discharge because of the inherent nature of the obligation, without regard to any culpability of the debtor. Regardless of the debtor’s good faith, for example, support obligations and many tax claims remain nondischargable.

Society’s interest in excising those debts from discharge outweighs the debtor’s need for a fresh economic start.

Among the debts that we exempt from discharge for public policy reasons are debts which arise from death or personal injury caused by the debtor’s operation of a motor vehicle while intoxicated, debts incurred by fraud or falsehood, debts incurred by willful and malicious injury, family support obligations, taxes, educational loans, fines, and penalties payable to a governmental entity, etcetera. These exceptions reflect Congress’ intent to carve out exceptions to dischargeability for important public interest policy considerations.

One category of debt that was added not too long ago to the code ensures that debtors cannot escape debts incurred by a debtor’s operation of a firearm.
motor vehicle while intoxicated. This change, which was first introduced by Senators Danforth and Pell in the early 1980s, was considered part of an “all-out attack on drunk driving.” Congress was persuaded to amend the Federal bankruptcy code with respect to the bankruptcy policy initiative. At the time, drunk driving accidents killed tens of thousands of Americans and disabled hundreds of thousands of people annually. Senator Danforth argued that drunk driving has caused innumerable suffering and economic loss, and in his words:

We must assure victims and their families that if they win a civil damage award against the drunk driver, they need not fear that the offender will use Federal law to escape his debt.

We should do no less for victims of negligence and recklessness and wrongdoing of gun manufacturers and distributors.

Senator Danforth told us:

It is a national scandal that 50,000 Americans are smashed and slashed to death on our highways and that 2 million people suffer disabling injuries in car accidents every year.

He went on to say:

The greatest tragedy is that we have become desensitized to the meaning of these statistics. We have almost come to accept this carnage as the unfortunate price we must pay for the mobility we enjoy. However, if we look behind the mind-numbing statistics—if we ask why so many people are suffering—we will see over half of this bloodshed results from our unwillingness to put a halt to the most frequently committed violent crime in America: drunk driving.

The reduction of alcohol-related driving fatalities was an important public policy issue, and by making those debts nondischargeable, Congress acted wisely to protect victims of drunk driving and to deter drunk driving.

Congress acted against those endless tragedies and senseless deaths and human suffering by amending the bankruptcy code so a drunk driver could not escape his debt by going bankrupt. Like debts incurred by drunk driving, debts for death or personal injury and costs to communities resulting from the unsafe manufacture or distribution of unsafe firearms and their negligent distribution should also not be dismissed in bankruptcy. The public policy involved here is an over-riding one, given the damage caused by the unsafe manufacture and distribution of guns.

Senator Danforth’s plea to curb drunk driving is very similar to our people’s plea to reduce gun violence. Week after week, Americans are lost to the senselessness of gun violence. Year after year, some 30,000 of us are lost to murder or suicide or unintentional shootings and tens of thousands of Americans are treated for firearm injuries. Many of these deaths and injuries are to children. When the carnage results from negligent manufacture or distribution of a firearm, we should not allow the manufacturer or distributor to evade the responsibility for its wrongdoing by reorganizing in bankruptcy.

Cities around the country and their residents are taking on this problem on their own. Thirty cities and counties have filed lawsuits alleging negligence, wrongdoing, unsafe actions on the part of the manufacturers or distributors. New Orleans started in October of 1998, followed by Chicago; Miami; Dade County; Bridgeport, CT; Atlanta, GA; Cleveland; Bridgeport, CT; Atlanta, GA; Cincinnati, OH; Wayne County, MI; and Detroit, MI; St. Louis, MO; Saratoga Springs, NY; and Providence, RI.

Citizens want the firearm industry to be accountable for unsafe actions on their part. They want firearm manufacturers to be held responsible for poorly constructed and unsafe products. Citizens want firearm manufacturers and distributors to be accountable for wrongfuI injuries resulting in public outlays for medical care, emergency rescue, and police investigotive costs.

The PRESIDING OFFICER. The Senator’s 10 minutes have expired.

Mr. LEVIN. I thank the Chair and yield myself an additional 3 minutes.

One way to deter such misconduct is to say that you cannot avoid that accountability by filing for reorganization in bankruptcy any more than you can evade a judgment for damages resulting from drunk driving.

Sound public policy also dictates that the debt incurred by a company’s action should not be ducked by a company reorganizing under chapter 11 while the company goes on its merry way and the victims are victimized twice.

This amendment does not judge the merits of any lawsuit or the liability of any parties involved in these lawsuits. The amendment simply gives our citizens the assurance that if they win a civil damage award against a firearm manufacturer, the company’s damage caused by the perpetrator cannot be evaded by being dismissed in bankruptcy court.

Mr. President, I ask unanimous consent that letters from the U.S. Conference of Mayors, the National League of Cities, the Violence Policy Center, and Handgun Control, which is chaired by Sarah Brady, be printed in the RECORD.

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

DEAR SENATOR LEVIN: On behalf of our 155,000 municipal elected officials, the National League of Cities strongly supports your amendment, S. AMT. No. 2658, to the Bankruptcy Reform Act of 1999 (S. 625) in prohibiting manufacturers, distributors and dealers of firearms from discharging debts which are firearm-related, incurred as a result of judgments against them based on fraud, recklessness, misrepresentation, negligence, or product liability, this amendment effectively stops an abuse of the bankruptcy system. More importantly, the measure helps insure that municipal law-suits against the gun industry, are not underminded by firearms companies seeking to potentially avoid their culpability through the use of the bankruptcy code.

While NLG does not support some amendments to the Bankruptcy Reform Act (particularly the Ross-Moynihan Amendment, S. AMT. No. 2758) that would preempt state and local government rates that apply to Chapter 11 corporate repayments, we believe that this particular amendment helps cities and towns monies expand for numerous criminal investigations, litigation fees, health costs, and other resources needed to address incidents of gun violence. The National League of Cities has a long history of supporting legislation to reduce gun violence and gun-related criminal activity. Like debts incurred by drunk driving, Congress must send a clear and convincing message that it will not permit debtors to escape debts incurred by improper conduct. It is crucial that the federal government do all that it can to help local governments effectively address gun violence with common sense legislation that curtails access to firearms including altering the bankruptcy code.

An unfortunate example of such abuse occurred in 1996 when Lorcin Engineering Co.,
a manufacturer of cheap handguns, filed for Chapter 11 bankruptcy protection. Lorcin was one of the nation’s chief manufacturers of “Saturday Night Specials” or junk guns, whose inferior, inexpensive semi-automatic pistol was number two on the list of guns traced to crime scenes by the Bureau of Alcohol, Tobacco and Firearms. Lorcin’s low quality and unsafe firearms caused innumerable deaths in our nation’s cities and towns because of their cheap construction and easy availability in urban areas. Moreover, Lorcin’s weapons were the basis of more than two dozen product liability lawsuits. Once Lorcin decided they could not defend their practices against the multiple liabilities that were being asserted against them, they decided to protect themselves by using the bankruptcy system to settle these lawsuits for pennies on the dollar and be exempt from future product liability suits filed by the city of New Orleans.

Senator Levin, we support this amendment, and strongly advocate its inclusion in any bankruptcy reform measure enacted that does not undermine municipal fi-
nance. Additionally, you will find an en-
closed resolution passed by the National League of Cities, the National League of Cities Security and Crime Prevention Steering Committee that supports your proposed amendment.

Sincerely,

CLARENCE E. ANTHONY,
President, Mayor, South Bay, Florida.

Enclosure.

PROPOSED RESOLUTION—PSCP #9—CITIES LAWSUITS AGAINST THE FIREARM INDUSTRY

Whereas, gun violence results in great costs to cities and towns, including the costs of law enforcement, medical care, lost productivity, and loss of life; and

Whereas, it is an essential and appropriate role of the federal government, under the Constitution of the United States, to remove burdens and barriers to interstate commerce and protect local governments from the ad-
verse effects of interstate commerce in fire-
arms; and

Whereas, firearm manufacturers, distribu-
tors, and retailers, and importers have a spe-
cial responsibility to take into account the health and safety of the public in marketing firearms; and

Whereas, we do not maintain that the costs of gun violence should be borne by those liable for them, including negligent firearm manufacturers, distributors, and retailers, and importers; and

Whereas, the firearm industry has gen-
erally not included numerous safety devices with their products, including devices to prevent the unauthorized use of a firearm, indi-
cators that a firearm is loaded, and child safety locks, and the absence of such safety devices has rendered these products unrea-
sonably dangerous; and

Whereas, the firearm industry has poten-
tially engaged in questionable distribution practices in that the industry over-supplies certain legal markets with firearms with the knowledge that the excess firearms will be potentially distributed not nearby illegal markets; and

Whereas, it is fundamentally the right of local elected officials to determine whether to bring suits against firearm manufacturers on behalf of their constituents to best serve the needs of their city or town; and

Whereas, across the nation, cities are bringing rightful legal claims against the gun industry to seek changes in the manner in which the industry conducts business in the civilian market in their communities: Now, therefore, be it

RESOLVED, That the National League of Cit-
ies opposes any federal preemption that would prevent local officials to bring suits against firearm manufacturers on behalf of their citizens; and be it further

RESOLVED, That the National League of Cit-
ies urges better cooperation between firearm manufacturers and local elected officials to prevent gun violence and ensure less fire-
arm injuries and costs to cities and towns.

VIOLENCE POLICY CENTER,
Washington, DC.

DON’T LET GUN MANUFACTURERS “TAKE ADVANTAGE OF THE SYSTEM”
SUPPORT THE LEVIN AMENDMENT TO THE BANK-
RUPTCY BILL TO HOLD GUNMAKERS RESPONSIB-
LE FOR DEFECTIVE GUNS

The Levin amendment to S. 625 will ensure that gun manufacturers cannot discharge debts incurred as a result of consumer law-
suits for defectively designed and manufac-
tured firearms.

The Levin amendment is necessary to en-
sure that firearm manufacturers—which are exempt from federal health and safety regu-
lations—remain accountable for civil liability 
to consumers injured by negligent or reck-
less industry behavior. Lack of health and safety regulation means that the civil jus-
tice system is the only mechanism available to regulate the conduct of gun manufactur-
ers.

At least three major gun manufacturers have sought bankruptcy protection specifi-
cally to protect themselves from product li-
ability claims.

Lorcin Engineering arrogantly stated in 1996 that it was filing for bankruptcy to pro-
tect the company from at least 18 pending li-
ability suits. Lorcin officials stated to Fire-
arms Business—a gun industry trade publica-
tion—that the company chose to “take ad-
vantage of the system” when it decided that it could not defend against liability claims. Furthermore, at a 1996 meeting of creditors, the U.S. Bankruptcy Trustee posed the fol-
lowing question to Lorcin’s attorney, “The triggering factor [of the bankruptcy] was the Texas lawsuit, but there were three or four others that could be done. Is that the problem?” Lorcin’s lawyer responded, “Yep.” In 1993, Lorcin was the number one pistol manufacturer in America, churning out 1.5 million guns a year. By 1996, Lorcin's .380 pistol regularly tops the list of all guns traced to crime by ATF.

Davis Industries, also motivated by pend-
ing product liability suits, also chose to file for bankruptcy protection in 1996. As a result, the Superior Court of California enjoined the City of Los Angeles from pursuing Sundance in the city’s lawsuit to recover costs inc-
urred on the city as a result of gun vio-
ence.

Many more gun manufacturers may soon choose to follow in the footsteps of Lorcin, Davis, and Sundance to avoid liability for suits filed recently by U.S. cities. More than 25 cities and counties have filed lawsuits against the gun industry. These lawsuits allege that firearm manufacturers have produced and sold defectively designed firearms, and engaged in negligent mar-
keting and distribution practices resulting in countless deaths and injuries in America’s cities. The NAACP has filed a similar law-
suit. Lawyers for the cities are very con-
cerned that bankruptcy reform may become a com-
mon gun industry defense tool.

Many other consumer lawsuits are pending against gun manufacturers.

For example, Glock is the defendant in a case recently certified as a nation-wide class action. The case includes individuals and po-
lice officers injured by unintentional dis-
charges of Glock handguns. The suit alleges that Glock handguns, including those used by many police departments, contain design defects long known to the manufacturer.

Gun manufacturers must not be allowed to use bankruptcy to escape accountability when their reckless or negligent conduct causes death and injury to victims of gun violence. Support the Levin amendment to S. 625.

HANDGUN CONTROL,
Washington, DC, November 9, 1999.

Hon. CARL LEVIN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LEVIN: I am writing in sup-
port of the amendment to S. 625, the Bank-
ruptcy Reform Act of 1999 offered by Sen-
ators Levin, Durbin, Wyden, Kennedy, Fein-
stein, Lautenberg, and Schumer. This amendment would prevent firearm manufac-
turers from filing for Chapter 11 bankruptcy protection to evade wrongful death and personal injury lawsuits caused by their dangerous products.

As you know, several cities and their resi-
dents have filed suits against the gun indus-
ty to recover some of the costs of gun vio-
lence and to attempt to encourage more re-
sponsible conduct by the industry in the fu-
ture. These suits attack two basic problems caused by irresponsible practices of the gun industry. One is the failure to make guns as safe as possible and failing to include many simple, live-saving safety devices in their guns. The other is the irresponsible distribu-
tion of guns which enables and fosters the criminal use of guns.

Gun manufacturers, distributors, and deal-
ers should not be able to evade these legit-
imate claims for damages by filing for bank-
ruptcy. In 1996, Lorcin Engineering Com-
pany, one of the chief manufacturers of “Saturday Night Specials” or “junk guns” filed for Chapter 11 bankruptcy to protect itself from multiple product liability law-
suits. Other gun manufacturers, like Davis Industries and Sundance Industries, have fol-
lowed Lorcin’s lead and have filed for bank-
ruptcy to avoid liability. We must not allow other firearms companies to take advantage of the bankruptcy system.

I urge you to support this important amend-
ment.

Sincerely,

SARAH BRADY,
President, MAYOR, South Bay, Florida.

Mr. LEVIN. My friend from Illinois is not here, so I simply yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I rise to speak in opposition to the amendment offered by the Senator from Michigan. This amendment makes debt owed by a corporation on account of firearms non-dischargeable in a chapter 11 reor-
organization bankruptcy proceeding if there is any fraudulent, illegal, or criminal act for fraud, misrepresentation, negligence, nuisance, or product liability. In addi-
tion, this amendment excepts such
debits from the automatic stay protection provided in a bankruptcy proceeding.

This amendment effectively singles out both gun manufacturers and those who legally transfer guns, including major retailers who sells guns to armorer. It is contrary to all laws, and prevents them from successfully reorganizing under the bankruptcy laws, if they should need such reorganization. If a large product liability suit succeeds against a gun manufacturer, this amendment virtually ensures that the company affected will be driven out of business and its workers will lose their jobs.

In addition to being just bad policy, the amendment is also self-defeating. Here is why: it effectively assures that only a fraction of the judgment against the affected company will be paid, if at all. That is because those manufacturers that could pay off the judgment over time will not be able to do so, and will be forced into liquidation. This is neither good for the lawful business, nor for those other investors or creditors with legitimate claims against the company.

I also want to point out to my colleagues that as a matter of long-standing bankruptcy policy in the United States, it has been universally recognized that if a company with manufacturing expertise suffers an unexpected financial setback—whether from new liability judgments or business reverses—everyone is better off if it can at least try and restructure the business to preserve its legitimate business lines. Workers can save their jobs and creditors can be paid off over time from the operating revenues of the restructured company, receiving much more than would be left if the business would go bankrupt. We should not be setting the precedent that lines of business that are unpopular will be targeted next?

What this amendment will do is ensure that the people who illegally transfer guns, including those who sell guns, are going to the other side. Workers can save their jobs and creditors can be paid off over time from the operating revenues of the restructured company, receiving much more than would be left if the business were liquidated. This is not the bill on which they should be making those political points. This would be a very disastrous approach towards bankruptcy law. It means that anytime you find enough popular business a majority of Members of Congress can stick it to, they are going to be able to do it under the bankruptcy laws. That is ridiculous. When we start showing preferences for certain political points of view in bankruptcies to the exclusion of the sin of illegal firearms, then it seems to me we are all going to suffer. Sooner or later, it is going to affect something that each one of us treasures or thinks is particularly important.

I speak in opposition to this amendment. This amendment would do an injustice to the bankruptcy laws. In the process, I think we will not accomplish what is good for our constitutionally justifiable, and not in these bits and pieces that literally mean something to me, and that really want to do it. It is better for us to battle out these issues in Congress. I, for one, will be opposed to any diminution in our two amendment rights and privileges. If you want to diminish the second amendment, then you ought to do it by constitutional amendment. You shouldn’t be doing it by bits and tatters. It ought to be done straight up, and it ought to be done in a way that is constitutionally justifiable, and not in these bits and pieces that literally mean something to me, and that I really want to do it. It is better for us to battle out these issues in Congress. I, for one, will be opposed to any diminution in our second amendment rights and privileges. If you want to diminish the second amendment, then you ought to do it by constitutional amendment.

I yield the floor.

The PRESIDING OFFICER. The time yields to the Senator from Illinois.

Mr. DURBIN. I am more than happy to rise in support of what I consider to be a very important and valuable amendment in this debate on the bankruptcy bill.

I am not one who is in favor of abolishing the second amendment, nor, I assume, is the Senator from Illinois. What we are attempting to do in this bill is address a very serious problem. For those who believe the second amendment is somehow an absolute right to bear arms, I will just tell them, there are no absolute rights under the Constitution of the United States. Each and every right that is guaranteed to us as individual citizens can be limited. Whether it is the right...
of free expression limited by the libel laws or even the right to life limited by death penalties that are imposed in many States, all of these things suggest that no right is absolute, and certainly the right to bear arms is not either.

We have had regulations throughout our modern history that have limited the rights of those who care to bear arms in the interest of the public good. That is what this amendment is all about.

Why are we debating guns on a bankruptcy bill? It gets down to the very basics. The bankruptcy law is designed so a person who has reached an economic position in life where they can't see a good future can go to the court and ask for relief from their debts, whether that is an individual or a family or a business. We say, for almost two centuries in this country, that bankruptcy is a right of individuals under our Federal court system. Again, we may disagree and say the same thing, but people who come to court will be limited in the types of debts they can discharge.

We make a list, a pretty lengthy list, of some 17 or 18 exceptions. They include such things as debts incurred by fraud that can't be discharged in bankruptcy court, alimony and child support, student loans, debts from death or personal injury resulting from driving while intoxicated, court fees. There are several others. It suggests that when the Congress wrote the bankruptcy laws and continued to amend them, we said there are certain things in a bankruptcy court from which you cannot escape. If you have been guilty of certain conduct, if you have not met certain obligations, the bankruptcy court will not be your shield or your shelter.

What the Senator from Michigan is doing with his amendment is saying that the gun industry, the gun manufacturers, if they have engaged—and I will quote directly from the amendment—if they have engaged in fraud, recklessness, misrepresentation, nuisance, or product liability, they cannot race to the bankruptcy court and escape their responsibility to the American people. It is just that straightforward.

Those who are arguing that we should carve out some special exceptions for the gun manufacturers, if they have engaged—that I will quote directly from the amendment—if they have engaged in fraud, recklessness, misrepresentation, nuisance, or product liability, they cannot race to the bankruptcy court and escape their responsibility to the American people. It is just that straightforward.

Several firearm manufacturers have recently been sued in cases that have been brought by cities and municipalities and counties and other local governments that have, frankly, been victimized by gun crimes. These people, in their lawsuits, are alleging that the gun manufacturers have been guilty of misconduct beyond selling the gun, that they have been involved in marketing guns for example, that ended up putting guns in the hands of those who commit crimes. Those lawsuits are still pending, but the interesting response from the gun manufacturers is:

"So what, sue us if you want to. Ultimately, if you win your verdict, we will go to bankruptcy court, and we are going to escape any liability to the citizens of these cities and counties and States which are bringing these lawsuits.

Two companies have already sought bankruptcy protection: Lorcin Engineering and Davis Industries. The Lorcin .380 pistol tops the list of guns traced by the Bureau of Alcohol, Tobacco and Firearms for its involvement in crime. By virtue of the bankruptcy law, these manufacturers are able to make millions of dollars flooding the market with low-quality firearms of little appeal to legitimate sportsmen and hunters but of great appeal to criminals and gang bangers.

Once these companies are sued, because they are flooding the market with these cheap Saturday night specials, they simply declare bankruptcy, and they say they are financial responsible for their misconduct. The owners of these companies remain free to start up a new company under a new name making the same weapons, wreaking havoc across America because they are flooding us with these guns.

Lorcin officials stated to Firearms Business, a magazine that is published by the gun industry, that the company chose to "take advantage of the system" when it decided it couldn't defend against liability claims. What Senator LEVIN is doing—and I am happy to join him—is to say to Lorcin and other companies: Not so fast. If you are going to flood the markets of America with these cheap Saturday night specials, if you are going to be liable for increasing crime and increasing violence in America, you cannot use the Federal law as your shield or shelter when it comes to our bankruptcy court. I think Senator LEVIN is doing the right thing.

For those who would argue, as I have already heard on the floor, that the Congress has failed to face; that is, the fact that American families are fed up with this gun violence. They expect Members of the Senate and the House to come forward with reasonable suggestions to make their neighborhoods safer, to take guns out of the hands of those who would misuse them and out of the hands of children.

Senator LEVIN has a valuable amendment here. He is saying to these companies: You will be held responsible. Every single one of those who argue that the laws Congress has contemplated in the past are somehow restricting gun ownership in this country cannot answer the most basic question: If gun ownership is so restrictive in this country, how do we happen to have over 200 million firearms already in the hands of 275 million people?

The fact is, these guns are readily available, and on the average almost 90 people are killed, including 12 children, every day because of the proliferation of guns and the fact that they get into the wrong hands. Gun manufacturers understand that they are finally going to be held accountable. These lawsuits are going to accomplish what legislators across the Nation and this Congress have failed to face; that is, the fact that American families are fed up with this gun violence. They expect Members of the Senate and the House to come forward with reasonable suggestions to make their neighborhoods safer, to take guns out of the hands of those who would misuse them and out of the hands of children.

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Everyday, 13 more children across the country die from gunshot wounds. Yet, the national response to this death toll continues to be grossly inadequate. The gun industry has fought against reasonable gun control legislation. It has failed to use technology to make weapons that are marketed to insulate itself from its distributors and dealers, once the guns leave the factory door.

Studies estimating the total public cost of firearm related injuries put the cost at over one million dollars for each shooting victim. According to the Centers for Disease Control, cities, counties, and states incur billions of dollars in costs each year as a result of gun violence—including the costs of medical care, law enforcement, and other public services.

Democrats across the country are attempting to deal with the epidemic of gun violence that claims the lives of so many people each year. Law enforcement agencies, parents, and youth are struggling to deal with this continuing epidemic of gun violence. But the gun industry, and Congress, and most state legislatures have persistently ignored these concerns.

Now, when the courts are likely to hold them accountable, some gun manufacturers are attempting to avoid their responsibility by filing for bankruptcy. One example is Lorcin Industries. Lorcin was one of the largest manufacturers of "affordable" guns. Law enforcement and gun-control advocates call them "Saturday night specials"—the inexpensive, easily concealed handguns often used in crimes.

Lorcin is one of several companies that sprang up after a 1968 law banned the sale of semi-automatic weapons. Lorcin was named as a defendant in 27 lawsuits. The suits charge that Lorcin and other firearm manufacturers do not provide adequate safety devices, and that they negligently market their products, so that their weapons are too easily accessible to criminals and juveniles. Lorcin said that at least 35 wrongful-death or injury claims involving people killed or wounded when their Lorcin pistols accidently discharged. Lorcin settled at least two dozen of the 35 claims, ranging from a few thousand dollars to $495,000.

Lorcin sought refuge from these product liability lawsuits by filing for Chapter 11 bankruptcy in October 1996. In bankruptcy, Lorcin was able to settle its lawsuits for pennies on the dollar, when tens of millions of dollars in damages were at stake. One of the major issues raised by creditors in the Lorcin bankruptcy case was whether the company was using the ability to reorganize its operations under the bankruptcy code as a way to avoid paying large sums to plaintiffs if it lost the suits.

Last January, Lorcin was released from a lawsuit filed by the City of New Orleans. It petitioned to be removed from another lawsuit filed by the City of Chicago, because the company was reorganizing itself under Chapter 11 of the Bankruptcy Code when the cities filed their lawsuits. The litigation has prompted two other gun manufacturers to seek refuge in bankruptcy. Sundance Industries of Valencia, California filed for Chapter 7 bankruptcy. The owner said he has been worn down by the legal assault on the gun industry. In addition, Davis Industries of Mira Loma, California sought Chapter 11 protection in the U.S. Bankruptcy Court on May 27, 1999.

According to a lawyer who represents creditors in the bankruptcy of Lorcin, "Bankruptcy is a very useful negotiating tool and predictably the more suits that are filed, the more these gun companies are going to file for bankruptcy." A lawyer for one of the cities suing the gun-makers said that bankruptcy "is going to be a huge pain," because it will require much more time and expense for the cities, limit the amount of damages they can collect, and, perhaps most important, put the litigation in federal bankruptcy court.

Lorcin was also the subject of at least 10 lawsuits in Michigan, one of which was brought by the city of Detroit. According to a lawyer representing creditors in the 1996 bankruptcy of Lorcin, "Bankruptcy is a legal term of art. It means to hold gun manufacturers accountable for the harm caused by their products. As we have seen with litigation against the tobacco industry, manufacturing secrets and marketing secrets often come to light in a courtroom.

Public interest lawsuits have changed the balance of power between the gun industries long thought to be invincible. The Levin amendment supports the citizens harmed by these powerful industries. It deserves to be supported by the Senate, and I urge the Senate to approve it. Mr. President, I would like to con- gratulate my friend, the Senator from Michigan, Mr. LEVIN, for the development of this particular amendment, and I join with others to recommend it strongly to the Senate. I am hopeful that it will be successful.

The Levin amendment, as has been pointed out, takes the initiative to close a gaping loophole that allows the gun manufacturers and distributors to use the bankruptcy code to avoid judgments against them based on fraud, recklessness, and negligence, or product liability. Firearm manufacturers and dealers should not be able to abuse the bankruptcy laws to escape liability.

The entire focus of the current lawsuits is the wrongdoing of the defendant corporations. The authority of the court to award damages against these defendants requires a judicial finding that the company engaged in misconduct in the manufacturing or marketing of its product. In the absence of such a finding, there is no liability. At long last, the American people are getting their day in court against the gun industry, and the gun manufacturers and the NRA fear that justice will be done.
America has a gun problem and it is massive. The crisis is especially serious for children. Every day, 13 more children across the country die from gunshot wounds. For every child killed with a gun, four are wounded. Yet the national response to this death toll continues to be unacceptably inadequate.

The gun industry has fought against reasonable gun control legislation. It has failed to use the technology to make guns safer. All we have to do is remember the debates we had on the violence prevention legislation that died at the end of last year. We saw the efforts to try to provide common sense solutions to those who make these weapons available to individuals in our society who should not have these weapons, and how that was frustrated in important ways by the gun manufacturers. They were able to keep that piece of legislation that was passed with regard to gun show loopholes tied up in conference. How many weeks and how many months have we been unable to address this issue either in conference or back on the floor of the U.S. Senate? Those efforts continue to go on even today.

Here we find in the bankruptcy legislation an attempt by the gun manufacturers to exercise their muscle by giving them a special consideration at a time when the problems they foist on the American families are so significant.

The gun industry has attempted to insulate itself from its distributors and dealers once the guns leave the factory door. Guns are the only consumer products exempt from safety regulations.

Cities, counties, and States incur billions of dollars in costs each year as a result of gun violence, including the costs of medical care, law enforcement, and other public services. Studies estimating the total public cost of firearm-related injuries put the cost at over $1 million for every shooting victim. These costs are at stake. One of the major issues raised by creditors in the bankruptcy case was whether the company was using the ability to reorganize its operations under the bankruptcy code as a way of avoiding paying large sums to plaintiffs if it lost the suits.

As a result, Lorcin was able to settle its lawsuit for pennies on the dollar when tens of millions of dollars in damages were at stake. The major parties to the lawsuit are the families who have legitimate interests in pursuing their rights in a court of law.

A lawyer for one of the cities suing Lorcin Industries, one of the largest manufacturers of the Saturday night specials, said he had been worn down by the gun industry's efforts to make guns safer. He said, "All we have to do is pass the Levin amendment and we will end the gun industry's efforts to make guns safer. All we have to do is pass the Levin amendment and we will end the gun industry's efforts to make guns safer."

In addition, last May, Davis Industries of St. Louis, MO, filed a bankruptcy for pennies on the dollar. The company had been forced to pay $6 million for the death of a young girl from St. Louis. The gun industry's efforts to make guns safer continue to be frustrated in important ways by the gun manufacturers. They are, in effect, putting the public at risk.

Communities across the country are attempting to deal with the epidemic of gun violence that claims the lives of so many people each year. Law enforcement officials, community leaders, parents, and youth are struggling to deal with this continuing epidemic of gun violence. But the gun industry, Congress, and most State legislatures have persistently ignored these concerns.

At long last, the American people are getting their day in court against the gun industry. Individuals, organizations, and municipalities are making progress in their effort to hold the industry liable for its failure to incorporate reasonable safety designs in the guns they sell, including features that would prevent gun use by children and other unauthorized users. Personalizing or childproofing guns would dramatically reduce the number of unintentional shootings, teenage suicides, and criminal offenses using stolen weapons to be grown-up inadequate.

One such lawsuit was filed in Massachusetts on behalf of the parents of Ross Mathieu, a 12-year-old boy who was killed in 1996 when a friend the same age unintentionally shot him with a Beretta pistol, believing that the gun was unloaded. In 1997, a suit was filed against Beretta in Federal court in Boston alleging that Beretta caused the death by failing to include with the pistol either a magazine disconnect safety device, a chamber-load indicator, or a locking device that would have "personalized" the gun.

Last summer, the city of Boston filed a suit against gun manufacturers, distributors, and dealers whose manufacturing decisions, marketing schemes, and distribution patterns have injured the city and its citizens. Boston is one of 30 cities and counties to have filed groundbreaking lawsuits to reform the gun industry.

When the courts seem likely to hold the industry accountable, some gun manufacturers are attempting to avoid their responsibility by filing for bankruptcy. We have heard the example of what happened when, as pointed out, Lorcin Industries, one of the largest manufacturers of the Saturday night specials. We heard how they have attempted to use the bankruptcy laws to their financial advantage and to the disadvantage of the families who have legitimate interests in pursuing their rights in a court of law.

As a result, Lorcin was able to settle its lawsuit for pennies on the dollar when tens of millions of dollars in damages were at stake. The major parties to the lawsuit are the families who have legitimate interests in pursuing their rights in a court of law.

After a lawyer for one of the cities who have made these claims, and many people we are seeing who have fallen on hard times—and at the same time sensitive to the needs of business and others who otherwise wouldn't be able to get the funds they need that are so central in a marketplace kind of system, all of those people, it seems to me, end up without the treatment they deserve. They are, in effect, put in an unfavorable light when, in fact, the gun manufacturers are given a free ride. We make sure that everybody is treated fairly—small businesses that have these claims, and many people we are seeing who have fallen on hard times and need a fresh start. But let us not send the worst possible message, which is that if you engage in the kind of reprehensible conduct my colleagues have documented, in effect, you will get a free ride if you are a gun manufacturer.

It is important to vote for this bankruptcy legislation. The gun industry has tried to dodge their responsibilities. Pass the Levin amendment and we will end the gun industry's efforts to make guns safer. All we have to do is pass the Levin amendment and we will end the gun industry's efforts to make guns safer. All we have to do is pass the Levin amendment and we will end the gun industry's efforts to make guns safer. All we have to do is pass the Levin amendment and we will end the gun industry's efforts to make guns safer. All we have to do is pass the Levin amendment and we will end the gun industry's efforts to make guns safer.
the Senator from Michigan. As the sponsor of the amendment, he ought to have the attention of those of us who oppose his amendment.

I say that this amendment detracts some from the purpose of the legislation. May I be reminded. To the extent that I hope people will vote against it. To the extent that people see this as a legitimate part of what we are debating, then I would offer this point. I am going to offer more than one point very closely related to the amendment, and then I will stick to an amendment.

The amendment has no concern for the employees of the makers or retailers of firearms. As I said, the Senator from Wisconsin proposed it. They made the trust fund. It seems to me, unless there is some ulterior motive other than helping victims with this legislation, that we should think about that approach—an approach that protects the reputation of the person who is guilty of wrongdoing have tort apply to pay that tort. Consequently, if that is not the approach, I think it reveals the real purpose of the amendment. I am sure he is mistaken about how bankruptcy works for corporations and chapter 11 because his amendment applies just to corporations.

One other thing about the amendment is the presumption is so stated by the Senator from Michigan that this is just one addition—I think he would say that this is the 19th addition—to a long list of exceptions that are non-dischargeable through the bankruptcy court. I think he is mistaken about how bankruptcy works for corporations and chapter 11 because his amendment applies just to corporations.

Section 1111 of chapter 11 has two separate discharge provisions. It has one section for corporations and it has one for individuals. The discharge provision for corporate debtors discharges all debts. The discharge provision for individuals lists nondischargeable debts.

So the idea this exception to discharge is just one more of a long list of 18 is flatout wrong. From this standpoint, then, the amendment by the Senator from Michigan is unprecedented, and I will be glad to share the code sections with my colleagues, if they desire. But subsection (a) discharges a debtor from any debt that arose and that applies to the corporation. But subsection (b) says the confirmation of a plan does not discharge an individual debtor. From that standpoint, this is not one of a long list of things that are non-dischargeable. The PRESIDING OFFICER. Who owns time?

Mr. CRAIG. Mr. President, will the Senator from Utah yield time to the Senator from Idaho?

Mr. HATCH. I am happy to yield time to the distinguished Senator.

Mr. CRAIG. Mr. President, I thank the Senator from Utah, and let me also thank the Senator from Iowa for bringing what I think is necessary to bring to this debate as it applies to the Levin amendment, and that is common sense. Is, in fact, this amendment the kind of legislation we want to see? If you support the bedrock policy of bankruptcy law, I do not know how you can support the Levin carve-out because it undermines basically all of those policies.

The bankruptcy code establishes a structure that ensures everyone who is owed money by you will be treated fairly when the debtor is given, in essence, a fresh start under the law. The main purpose of the bankruptcy reform measures we are working on is to get more debtors to pay back more of the debts they owe to more of their creditors. That is a rather simple principle before this Senate. This issue has been with us. The Senator from Iowa and the Senator from Utah and others have struggled with it mightily for the last good number of years, to bring fairness and equity, and to say to debtors there is a credibility here and a responsibility you owe to your creditors. There needs to be a greater sense of fairness and balance brought. I think the fundamental underpinning is that the Levin amendment is a carve-out, and I think it flies in the face of those general policies. The supporters of the Levin amendment say they are trying to prevent firearm manufacturers from being bankruptcy debtors. I say to debtors there is a credibility here and a responsibility you owe to your creditors. That is rather straightforward. It is not only manufacturers; it is retailers and it is corporations. So it is a broad brush. While they would like, I am sure, to create the image that there is a manufacturer out there who produces a firearm and somehow it is evil, are Walmart and Kmart and hardware stores that sell legitimately as federally licensed firearms dealers evil? In my opinion, they are. That is not the debate, nor is that the issue. Let’s look at what the amendment does. It is unfair because it picks out a specific industry and it restricts the bankruptcy relief available to that industry.

In other words, if we in the Senate have now decided we are going to pick winners and losers who are politically correct or politically incorrect based on your particular philosophy or point of view, and that is what the amendment, the Levin carve-out does. Is this Senate going to start picking winners and losers amongst businesses in our country? We never have. We created certain conditions or certain things that are special within the law but never politically have we said: You are a winner, you are safe under the law; you are a loser, you lose. That is not what we do. We let the marketplace generally do that, and we let consumers generally do that.

Today it is the firearm manufacturers and tomorrow is an industry that produces alcohol; or a fatty product, and we have decided in our society that...
fat consumption is no longer good for the American consumer, even though as free citizens they ought to have a right to choose.

"That sounds silly, Senator Craig. You ought not be saying things like that.

When I watched the trial lawyers organize and convince the attorneys general that going after the tobacco companies was good because the tobacco companies had fallen out of favor and it was politically correct thing to do, I said, "And next will be firearm manufacturers. That is what is going on out there today. Municipalities that arrest people who illegally use firearms do not have a Justice Department that backs them up.

The Clinton administration ran from enforcement for 7 years. Of course, just this week they got a new religion out there because they have seen the polls and they have seen what the American people have said: Enforce the laws, Mr. President.

I wonder how my friends across the aisle would react if I proposed a similar amendment making bankruptcy relief unavailable to former Presidents of the United States? "That would be foolish, Larry. You should not do something such as that.

That spells the intent of this amendment. I think the Senator from Iowa was a little kinder than I am, suggesting maybe there was an ulterior motive and it was probably more political than it was legally substantive. I think he is right.

It is also unfair because it would have the effect of putting the interests of some creditors ahead of others. The lawsuits we are talking about are not claims for real injuries resulting from some wrong, but a treasure hunt. We saw the hundreds of millions of dollars the trial attorneys made, and now States are getting, from the settlements from the tobacco industry. The treasure hunt resulted; the treasures were found. They are looking for multimillion-dollar verdicts or settlements to go to the trial lawyers and municipal governments they represent.

If there are legitimate creditors out there in a bankruptcy settlement, they are not respected because they have taken those companies out and they simply fall away. The effect of the Levin amendment would be that lawyers and government bureaucrats get paid first. Remember that: Lawyers and government bureaucrats get paid first. If there is anything left in this kind of bankruptcy of these multimillion-dollar verdicts, then and only then will a creditor get a dime.

The Levin amendment would also hurt the very people it claims to help because it would make it unlikely that more than a fraction of the judgments, if that much, would ever get paid off. This is because it would prevent more companies from taking a reorganization bankruptcy. Instead, it would simply, in all reality, force them into liquidation, where the creditors get nothing. Is that the intent of the Levin amendment? My guess is, if it is not the intent, clearly is the result.

What is the practical effect of all of this? It means instead of a company continuing to exist, a company being allowed to stay in business, to reorganize, to keep its employees intact, they close their doors, they lay off their employees, it clearly is the result. Not only are the creditors not going to be there to get the benefit of the jobs, the losses are lost.

It means there will be no business-generating income to continue to pay the debts it created. Whatever you can squeeze out of a business today is all you are going to get. That is the result of this amendment. Maybe that is the intent of the amendment. If it is, why don't we be honest with ourselves? This amendment was not substantively charged, it is politically charged. I think all of us understand that. My guess is that is how the vote breaks out on an issue such as this. In short, the amendment turns bankruptcy policy on its head.

It is designed to destroy legitimate and law-abiding businesses. It injures consumers, and it destroys jobs. The Levin amendment is clear and simply bad policy for this country, and I hope the Senate will choose to defeat it. We should not mix that kind of politics with this kind of constructive policy change that these Senators have worked to bring to the floor. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Mr. LEVIN. I yield 5 minutes to the Senator from New York.

Mr. SCHUMER. I thank the Chair, and I thank my colleague from Michigan for yielding time and for his leadership on this outstanding amendment.

Before I speak to the substance of the amendment, whenever we talk about gun issues, we must talk about the result. It is designed to destroy legitimate and law-abiding businesses. It injures consumers, and it destroys jobs. The Levin amendment is clear and simply bad policy for this country, and I hope the Senate will choose to defeat it. We should not mix that kind of politics with this kind of constructive policy change that these Senators have worked to bring to the floor. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I am here because I am deeply saddened to report to the Senate a very serious loss, as far as the country is concerned and a real sad loss for myself personally. I was saddened last night when I reported to the loss of Alaska Airlines Flight 261 on a flight from Puerto Vallarta, Mexico, to San Francisco.

Eighty-eight people were on board that plane, many of them apparently employees or relatives of employees of that airline. While the search continues, we have been told now that no survivors have been found. My thoughts and prayers and I hope all of our thoughts and prayers are with the families of these people who have perished.

Among those on the plane were at least five Alaskans. We think there were more. One was one of my very close and dear friends, Morris Thompson—our chairman's—husband, Mr. Thompson—and his daughter Cheryl.

Morris Thompson has been a respected leader of the Native community of our State and a businessman. Just last fall, he retired as the chief executive officer of a major corporation, a company that does business in every single region of Alaska. He was a member of the University of Alaska's Board of Regents. He served as president of the Alaska Federation of Natives. During the Nixon administration, he was the Commissioner of the Bureau of Indian Affairs. He was a member of the Interior for Indian Affairs in the Department of the Interior. He was president of the Fairbanks Chamber of Commerce and in 1971 was named Business Leader of the Year by the University of Alaska.

He is going to be remembered for his work on the Alaska Native Claims Settlement Act, landmark legislation in 1971, which was a tremendous economic boost for our Native people. His greatest legacy will be among the young people of our State who have benefited from Morris Thompson's fellowship program and the Doyon Foundation, which he created to subsidize tuition for Native students in Alaska.

My heart goes out to the Thompsons' surviving daughters, Nicole and Allison, and to all the members of their family. Morris has not just been a political leader and a business leader; he was a man of good character and good values who has touched the lives of many people in Alaska.