Senators should be aware that a vote on a continuing resolution is expected during tomorrow's session. Therefore, a vote could occur on that measure.

ORDER FOR RECESS

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order following the remarks of Senator KENNEDY, Senator DORGAN, and Senator GRASSLEY.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

BANKRUPTCY REFORM ACT OF 2000—CONFERENCE REPORT—Continued

Mr. KENNEDY. Mr. President, as I understand it, under the time agreement I was allocated 28 minutes.

The PRESIDING OFFICER. Just under 28 minutes.

Mr. KENNEDY. Will the Chair be kind enough to let me know when I have 3 minutes remaining?

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. Mr. President, I rise to urge the Senate to reject the flawed bankruptcy bill. For 3 years, the proponents and opponents of the so-called bankruptcy reform bill have disagreed about the merits of the bill. The credit card industry argues that the bill will eliminate fraud and abuse without denying bankruptcy relief to Americans who truly need it. But scores of bankruptcy scholars, advocates for women and children, labor unions, consumer advocates, and civil rights organizations agree that the current bill is so flawed that it will do far more harm than good. Every Member of the Senate should analyze these arguments closely. We can separate the myths from the facts and determine the winners and the losers.

A fair analysis will conclude that this bankruptcy bill is the credit card industry's wish list, a blatant effort to increase their profits at the expense of working families. We know the specific circumstances and market forces that so often push middle-class Americans into bankruptcy. Layoffs are a major part of the problem. In recent years, the rising economic tide has not lifted all boats. Despite low unemployment, a soaring stock market, and large budget surpluses, Wall Street cheers when companies, eager to improve profits by downsizing, lay off workers in large numbers.

During the period of January to October in the year 2000, the Bureau of Labor Statistics reported that there were a total of 11,364 layoffs resulting in more than 1.29 million Americans who were unemployed. In October 2000 alone, there were 874 mass layoffs—a layoff of at least 50 people—and 103,000 workers were affected.

Often when workers lose a good job, they are unable to recover. In a study of displaced workers in the early 1990s, the Bureau of Labor Statistics recorded that only about a quarter of previously laid-off workers were working at full-time jobs paying as much as or more than they had earned at the job they lost. Too often, laid-off workers are forced to accept part-time jobs, temporary jobs, or jobs with fewer benefits or no benefits at all.

I am always reminded that if you were to compare the economic growth in the immediate postwar period, from 1948 up to 1972, and broke the income distribution into fifths in the United States, virtually every group moved up together. All of them moved up at about the same rate. If you looked at the 1970s, and particularly in the 1980s and 1990s, and if you broke the income distribution down into five economic groups, you would see that the group that has enhanced its economic condition immeasurably is the top 20 percent. The lower 20 percent are individuals who have actually fallen further and further behind in terms of their economic income. The next group has fallen still further behind.

It is really only when you get to about the top 40 percent of the incomes for American families that you see any kind of increase. It is the group in the lower 60 percent who, by and large, have been affected by these significant layoffs. They have found it difficult to make very important and significant adjustments in their economic condition. They are hard-working men and women who are trying to provide for a family, ready and willing to work, want to work, but they see dramatic changes in terms of their income and they are forced into bankruptcy.

We see that many bankrupt debtors are reporting job problems. There are various types of adverse conditions. Many have been fired and some are victims of downsizing. We also find that more women are in the workforce and contributing significantly to the economic stability of the family. If they are victims of a job interruption, it has a significant, important, and dramatic impact on the income of the family.

If you look at the principal reasons for bankruptcies, more than 67 percent of debtors talk about employment problems. So these are hard-working Americans who are trying to make ends meet and we find that the economic conditions are of such a nature that they are forced into bankruptcy. Nobody is saying they should not pay or meet their responsibilities. But we also ought to recognize that in many of these circumstances it is not necessarily the individual's personal spending habits that force them into bankruptcy.

Another factor in bankruptcy is divorce. Divorce rates have soared over the past 40 years. For better or worse, more couples than ever are separating, and the financial consequences are particularly devastating for women. Divorced women are four times more likely to file for bankruptcy than married women or single men. In 1999, 540,000 women who headed their own households filed for bankruptcy to try to stabilize their economic lives, and 200,000 of them were also creditors trying to collect child support or alimony. The rest were debtors struggling to make ends meet. This bankruptcy bill is anti-woman, and this Republican Congress should be ashamed of its attempt to put it into law.

This chart shows the changes between the men and women in bankruptcy. You see that in 1981 a relatively small percentage of the bankruptcies were by single women. The red reflects the men and women going into bankruptcy. The yellow represents men alone. That was in 1981. In 1991, you see joint bankruptcy is continuing at a relatively slow pace. What you see is the men gradually going up. What happens with women is that it goes up exponentially. Over the period of the last 8 years, it is the women, by and large, who have been going into bankruptcy.

Is that to say that these women in 1999 aren't willing to work like the ones in 1991 or 1981, that they are unwilling to pull their fair share? No, Mr. President. There is another explanation.

The other explanation is, when we have the tragic circumstances of divorces, more likely than not the women are unable to get the alimony and unable to get the child support, through no fault of their own, and they end up going into bankruptcy. That is a primary reason for the increase in bankruptcies—although the total numbers of bankruptcies now have basically flattened out or have been reduced.

We are pointing out that economic conditions are responsible for about half of the bankruptcies. The fact is that downsizing has taken place. In spite of the fact that others who have invested in these companies have made enormous amounts of money, many of those employees have been laid off and have been pushed to the side.

These are hard-working men and women. The interesting fact to me is that people filing for bankruptcy are often middle-class people who want to work. These are not Americans trying to get by without playing by the rules. They are working, and they want to work, but there are circumstances that undermine their financial stability. As a result of these circumstances, there is an increase in the number of bankruptcies. It may be because of the inability to get child support or alimony, through no fault of their own.

So we have a responsibility to make sure, if we are going to pass legislation, that we are going to be fair to these individuals, rather than to be unduly harsh and penalize them. That is what I believe this current legislation does. It holds them to an unduly harsh standard. That is not only my assessment, it is the assessment of virtually all of the groups —advocates either for children or women or workers or those who fight for basic civil rights. These are organizations and groups that have spent a great deal of time advocating for children or women. They have reached the same conclusion as the 116 bankruptcy professors in law schools all over the country—not located in any particular area—who have examined this bill.

In the few moments before we voted yesterday, I asked the other side if they could name one single organization advocating for women and children and working families that supports this legislation and thinks it is fair to them. There isn't a single one. That ought to say something. It is not only those of us who are opposed to it who say it is grossly unfair, it is everyone. When you have a piece of legislation on the floor and there is a division, generally certain organizations support it and certain organizations don't. Not on this one. All the advocacy groups oppose it. Virtually all of them oppose it because they know it is unduly harsh and unfair to children, women, and workers, and unfair to consumers.

Mr. President, another major factor in the bankruptcy is the high cost of health care. 43 million Americans have no health insurance, and many millions more are underinsured. Each year, millions of families spend more than 20 percent of their income on medical care, and older Americans are hit particularly hard. A 1998 CRS report states that even though Medicare provides near-universal health coverage for older Americans, half of this age group spend 14 percent or more of their after-tax income on health costs, including insurance premiums, copayments, and prescription drugs.

Does that have a familiar ring to it? We just had a national debate, and the Presidential candidates were asked about prescription drugs. Why? Because of the escalation of the cost of prescription drugs. How does that actually impact and affect families? Well, it is a principal cause of bankruptcy for many families. They just cannot afford to pay for prescription drugs and meet the other kinds of needs they have in terms of paying rent or putting food on the table. They go in a declining spiral and they end up in bankruptcy.

These are individuals in families from whom the credit card industry believes it can squeeze another dime. The industry claims they are cheating and abusing the bankruptcy system and are irresponsibly using their charge cards to live in a luxury they can't afford.

I think these charts are enormously interesting, and I find them so compelling when you see what is happening and what is driving so many of these families into bankruptcy.

The high cost of prescription drugs: the Presidential candidates spoke about it and are talking about the importance of it. Every candidate across this country in this last campaign was saying what they were going to try to do to relieve the cost of prescription drugs.

There are millions and millions of senior citizens who can't afford to wait for an answer by Congress. What has happened to them? They go into bankruptcy. Similarly, we see the very tragic growth of the breakups of families and the fact that too many of those involved in those relationships are unwilling to meet their responsibilities to their children or to pay alimony.

What has been the result to women? They go into bankruptcy. Or, as we have seen as a result of the developing of our economy and these extraordinary mergers—fortunes are being made, on the one hand, by certain investors, but others who have given their lives to these companies and have received good compensation suddenly are cast aside. They are unable to quickly adjust to their changed economic conditions. What happens to them? They go into bankruptcy.

Certainly we need to have bankruptcy legislation. But we also ought to have bankruptcy legislation that is going to be fair and that is going to be just and not punitive. We say that this legislation is punitive. It isn't only myself and many of our colleagues, but it is also those who have spent their lives studying bankruptcy, teaching bankruptcy. Judges on the bankruptcy courts are dealing with it every single day and have virtually uniformly come to the conclusion that this legislation is unfair, unjust, unwise, and doesn't deserve to pass the Senate.

This legislation unfairly targets middle-class and poor families. It leaves flagrant abuses in place.

Time and time again, President Clinton has told the Republican leadership that the final bill must include two important provisions—a homestead provision without loopholes for the wealthy, and a provision that requires accountability and responsibility for those who unlawfully and often violently bar access to legal health services. The current bill includes neither of those provisions.

The conference report includes a half-hearted, loophole filled homestead provision. It will do little to eliminate fraud.

That is another failing of this legislation. It creates a loophole for wealthy individuals to effectively hide their income. That kind of loophole will not be available for hard-working Americans who run into the kinds of problems I have outlined. But the homestead provision that is left in this bill still can be abused by hiding millions in assets from creditors.

For example, Allen Smith of Delaware, a State with no homestead exemption, and James Villa of Florida, a State with an unlimited homestead exemption, were treated very differently by the bankruptcy system. One man eventually lost his home. The other was able to hide $1.4 million from his creditors by purchasing a luxury mansion in Florida.

The Senate passed a worthwhile amendment to eliminate this inequity. But that provision was stripped from the conference report.

Do we understand? The Senate adopted a provision to deal with the kind of inequity which I have just outlined—listen to this—Allen Smith of Delaware, a State with no homestead exemption, and James Villa of Florida, a State with an unlimited homestead exemption, were treated differently. One man eventually lost his home. The other was able to hide $1.4 million from his creditors by purchasing a luxury mansion in Florida.

The Senate passed a worthwhile amendment to eliminate this inequity. But that provision was stripped from the conference report.

Why? Why was it stripped? Who had the influence? Who authored that amendment? It would be interesting to find out. We don't know because the final conference didn't include members of our party or individuals who are against it. The provision just happened to show up in the conference report. Obviously, it is going to benefit some individuals to the tune of millions of dollars.

Surely, a bill designed to end fraud and abuse should include a loophole-free homestead provision. The President thinks so. In an October 12, 2000 letter, White House Chief of Staff, John Podesta says, ''The inclusion of a provision limiting to some degree a wealthy debtor's capacity to shift assets before bankruptcy into a home and in a State with an unlimited homestead exemption does not ameliorate the glaring omission of a real homestead cap.''

The homestead loophole should be closed permanently. It should not be left open just for the wealthy. Yet this misguided bill's supporters refuse to fight for such a responsible provision with the same intensity they are fighting for the credit card industry's wish list, and fighting against women, against the sick, against laid-off workers, and against other average individuals and families who will have no safety net if this unjust bill passes.

This legislation flunks the test of fairness. It is a bill designed to meet the needs of one of the most profitable industries in America—the credit card industry. Credit card companies are vigorously engaged in massive and unseemly nation-wide campaigns to hook unsuspecting citizens on credit card debt. They sent out 2.87 billion—2.87 billion—credit card solicitations in 1999. And, in recent years, the industry has begun to offer new lines of credit

targeted at people with low incomes—even though the industry knows full well that these persons cannot afford to pile up credit card debt.

Supporters of the bill argue that the bankruptcy bill isn't a credit card industry bill. They argue that we had votes on credit card legislation, and, that some amendments passed and others did not. But, to deal effectively and comprehensively with the problem of bankruptcy, we have to deal with the problem of debt. We must ensure that the credit card industry doesn't abandon fair lending policies to fatten its bottom line, or ask Congress to become its federal collector for unpaid credit card bills.

I have this letter from the American Bankruptcy Service in St. Paul, MN. It references the ''fresh start Visa Card.''

They offer a unique opportunity that could be of great benefit to firms and their clients. By becoming a debtor, they will have the ability to market an unsecured Visa credit card—the fresh start card—to their clients who have filed for chapter 7 bankruptcy, if they have completed the ''341 meeting'' of creditors with no outstanding issues with the trustees, have not yet received a discharge in bankruptcy, or have attached a copy of the bankruptcy notice to their Visa application.

They say several law firms, especially those representing consumer debtors in bankruptcy, have requested the ability to distribute the ''fresh start Visa'' application to their clients. For each credit card issued, their firm will receive $10.

The credit card industry is marketing to people who are already in bankruptcy.

Do we understand that? We heard all of the very pious speeches and statements—what we want is accountability; get those hard-working people and teach them the value of the dollar; teach them a lesson. Well, boy, this is apparently teaching someone a lesson here because they are already going to be eligible, according to the American Bankruptcy Service, to get another Visa card even though they have been in bankruptcy.

They are out there trying to tempt them, bring them in one more time, and squeeze out a few extra dollars. Where is the responsibility of the credit card industry in this area? Where is their accountability? Why is this all one way?

This bill is tough on women. It is tough on children. It is tough on workers who have had severe medical problems and had to get prescription drugs. It is tough on older workers who haven't gotten their Medicare and do not have health insurance. It is tough on all of them. But it is not very tough at all on the credit card industry that has contributed to the fact that this particular family or individual will be in bankruptcy.

Where is the fairness in this? It is not there.

Two years ago, the Senate passed good credit card disclosure provisions that added fair balance to the bankruptcy bill. It's disturbing that the provisions in the bill passed by the Senate this year were watered down to pacify the credit card industry. Even worse, some of the provisions passed by the Senate were stripped from the conference report.

The hypocrisy of this bill is transparent. We hear a lot of pious Republican talk about the need for responsibility when average families are in financial trouble, but we hear no such talk of responsibility when the wealthy credit card companies and their lobbyists are the focus of attention.

The credit card industry and congressional supporters of the bill attempt to argue that the bankruptcy bill will help—not harm—women and children. That argument is laughable.

Proponents of the bill say that it ensures that alimony and child support will be the number one priority in bankruptcy. That rhetoric masks the complexity of the bankruptcy system—but it doesn't hide the fact that women and children will be the losers if this bill becomes law.

Under the current law, an ex-wife trying to collect support enjoys special protection. But under this pending bill, credit card companies are given a new right to compete with women and children for the husband's limited income after bankruptcy.

It is true that this bill moves support payments to the first priority position in the bankruptcy code, but that only matters in the limited number of cases in which the debtor has assets to distribute to a creditor. In most cases, over 95 percent, there are no assets and the list of priorities has no effect.

This issue has been debated and debated and debated. It is amazing to me, as we work in the remaining few hours of this session, that we are not considering increasing the minimum wage for workers who have waited a long time to get a $1 increase from $5.15 an hour. No, we are not willing to pass that legislation. We are not willing to come back and pass and give consideration to reauthorizing an elementary and secondary education bill. We are not being asked when we come back to even deal with the Patients' Bill of Rights. No, we are being asked to look out for the credit card industry in a very significant and massive giveaway. It is wrong. This bill does not deserve to pass. I hope it will not.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). Under the previous order, the Senator from North Dakota is to be recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

EARLY PRISON RELEASE

Mr. DORGAN. Mr. President, on November 23 the Washington Post had a story about a murderer that I want to call to my colleagues' attention. This is the picture of the alleged murderer, Elmer Spencer, Jr. The headline of the story reads: ''Sex Offender's Arrest Makes an Issue of Mandatory Release.''

Let me describe for a moment what I read in the story and how I related it to things I have spoken about on the floor of the Senate before and how disappointed I am that nothing ever seems to change.

The young boy who was murdered a couple of weeks ago was a 9-year-old from Frederick, MD. His name was Christopher Lee Ausherman. He attended fourth grade at the South Frederick Elementary School. He had two brothers. The story said he liked Pokemon cards and was developing a real passion for fishing. He was apparently in his neighborhood, very close to his home on the street or sidewalk, and then a maintenance found his badly beaten, naked body in a dugout at McCurdy Field in Frederick, MD. Christopher Lee Ausherman had been sexually assaulted and strangled.

The story described how the arrest was made. I want to talk about the fellow who has been arrested and charged with this murder. The fact that he was on the streets in this country to murder anyone is unconscionable and shameful.

Elmer Spencer, Jr. was sentenced to 5 years for assault and battery in 1977, 23 years ago, and released 3 years later. Within a year of his release, he raped and attempted to strangle an 11-year-old boy. He paid him $20 to drink liquor and then tried to strangle him with shoelaces. Spencer left him unconscious after raping him. The boy regained consciousness as Elmer Spencer's attention was diverted, and miraculously escaped. Elmer Spencer was sentenced to 22 years in prison for that crime and released in 1994 after serving 14 years in prison.

In 1996, Elmer Spencer, Jr. was charged with attempted rape and three counts of assault. He attacked the police officers responding to the cries for help from a woman whom he was attempting to rape. He was sentenced to 10 years, and, amazingly, released on November 14 of this year, after serving just 3 and a half years.

Five days later, Christopher Lee Ausherman, a 9-year-old boy from Frederick, MD, was murdered by this man. Five days after being released from prison, having served 3 and a half years of 10-year sentence, this pedophile, this man who had attempted murder previously, killed this 9-year-old boy.

The question is, When will we learn in this country? We know who is committing the crimes, especially the violent crimes, in most cases. It is someone who has committed other violent crimes, been put in prison, and often released early.