United States of America, with a vivid history and past.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

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

The assistant legislative clerk read as follows:

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

Pending:

Feingold Amendment No. 17, to provide a homestead floor for the elderly.

Akaka Amendment No. 15, to require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt.

Leahy Amendment No. 26, to restrict access to certain personal information in bankruptcy documents.

The PRESIDING OFFICER. Under the previous order, there will be 20 minutes of debate, equally divided, prior to a vote on amendment No. 17.

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I appreciate this opportunity to speak further on my amendment which I offered yesterday. I urge my colleagues to support my senior homeowner protection amendment, amendment No. 17.

As I explained yesterday, my amendment would protect senior homeowners who need to file for bankruptcy relief. It would help to ensure that these older Americans do not have to lose their hard-earned homes in order to seek the protection of the bankruptcy system.

The homestead exemption in the bankruptcy laws is supposed to protect homeowners from having to give up their homes in order to seek bankruptcy relief. But in too many States, the homestead exemption is woefully inadequate. The value of this exemption varies widely from State to State. Federal law currently creates an alternative homestead exemption of just under $20,000, but each State gets to decide whether it will allow its debtors to rely on this already low Federal alternative, and most do not. In many States, the amount of equity a homeowner can protect in bankruptcy has lagged far behind the dramatic rise in home values in recent years. For example, in the State of Ohio the homestead exemption is only $5,000, and in the State of North Carolina the homestead exemption is a mere $10,000. Even for States that have no State exemption but allow debtors to use the $20,000 Federal exemption, like New Jersey, the number is just too low in this age of rising housing costs.

My amendment would create a uniform Federal floor for homestead exemptions of $75,000, applicable only to bankruptcy debtors over the age of 62. States could no longer impose lower exemptions on their seniors. If a State's exemption is higher than $75,000, however, that exemption would still apply. My amendment creates a floor, not a ceiling.

Older Americans desperately need this protection. Americans over the age of 65 are the fastest-growing age group filing for bankruptcy protection. Job loss, medical expenses and other crises are wreaking havoc on the finances of our seniors. In the 1990s, the number of Americans 65 and older filing for bankruptcy tripled. They need our help.

Older Americans also are far more likely to have paid off their mortgages over decades of hard work, making the homestead exemption particularly important for them. In fact, more than 70 percent of homeowners age 65 and older own their homes free and clear. For these seniors, their home equity often represents nearly their entire life savings, and their home is often their only significant asset. That means seniors are hit hardest by the very low homestead exemptions in some states.

It has become apparent that when there is no substantive argument against a worthy amendment, we will hear arguments cautioning against the unraveling of delicate compromises and agreements. It has become a convenient and frequent refrain on the floor of the Senate, that amendments cannot be tolerated. That is very troubling, particularly because in the Judiciary Committee we were implored to hold our amendments for the floor and promised that supporters of the bill would work with us to try to resolve our concerns. There is a bait and switch going on here. Bills that come before this body are not sacrosanct. If there is a substantive argument to be made against my amendment, I am eager to hear it and debate it. But it is just not right to say that an amendment will be defeated because the bill must remain ''clean'' to pass.

It is especially wrong to make that argument when it is just not true. Some amendments might be termed poison pills, but that term does not apply to this amendment.

To be frank, my amendment simply has no bearing whatsoever on the other provision of the bill that addresses the homestead exemption—that is, the provision whose delicate balance we have been so strongly cautioned not to disrupt.

Section 322 of the bill addresses abuses resulting from the fact that some States have unlimited homestead exemptions. An agreement on that provision—often called the Kohl amendment after my senior colleague from Wisconsin, who led the fight against these abuses—was reached in the 2002 conference. Senators from the States that had unlimited homestead exemptions, such as Florida and Texas, objected strenuously to a Federal ceiling preempting their States' unlimited exemptions. They agreed to the provision only when it was modified to its current version, in which the Federal cap applies only to people engaging in fraud and people who purchase property shortly before filing for bankruptcy.

My amendment has no bearing whatsoever on that compromise deal. The Senators who initially objected to Senator Kohl's attempt to limit wealthy debtors' abuse of the homestead exemption are from States where the homestead exemption is already unlimited. In those States, my uniform Federal floor would have absolutely no effect. The unlimited exemption would still apply.

On the other side of the negotiations were people like Senator Kohl who were attempting to prevent wealthy debtors from abusing the homestead exemption by buying multi-million dollar mansions in States with unlimited homestead exemptions. I have not heard them object to giving seniors a uniform homestead exemption that is less than the Federal ceiling provided in Section 322. Once again, my amendment has absolutely no effect on the deal that was cut.

I would also point out that supporters of the bill are perfectly willing to override State decisions with regard to homestead exemptions in certain circumstances. This bill already requires that a Federal maximum exemption apply to prevent abuse by wealthy debtors seeking to hide their assets in a mansion and get rid of their debts through bankruptcy. Why can't we insist on a Federal floor to protect senior citizens? It makes no sense to suggest that this amendment violates State prerogatives on the homestead exemption since the bill already does just that.

So I am having a hard time figuring out who would object to my amendment, and what delicate compromise is going to be undone if my amendment passes. Is anyone going to stand on the floor of the Senate and defend the right of States to harm the elderly by forcing them to sell their homes in order to seek bankruptcy protection? Are we really going to take the States rights argument that far?

So my amendment has nothing to do with compromises already made in this bill. It would not unravel the bill, or upset the compromise on the homestead exemption. Now the credit card companies probably don't like this amendment because it will protect

some seniors from having to sell their homes to pay their debts. Once again, the Senate has a choice to make. Will we stand with our senior citizens or with the credit card companies and big banks?

I also want to explain a bit more why I have limited the amendment to debtors age 62 and over. The argument was made yesterday by the Senator from Alabama that a single mother or a young family also would benefit from a larger exemption. But seniors are the people who need the exemption most. Most people in their 20s and 30s do not have $75,000 of equity in their homes, if they own homes at all. Certainly those who are filing for bankruptcy do not. Seniors, on the other hand, have worked their whole lives to payoff their mortgages and guarantee themselves a comfortable place to live in their retirement. They survive on their modest social security benefits precisely because they have no mortgage or rental payments. Are we now going to force them to forfeit their homes because they face such high medical expenses that they have to seek bankruptcy protection?

In addition seniors are typically living on fixed incomes and simply don't have the ability to rebuild wealth that younger people have. Nor can they afford to make payments on a new mortgage. If forced to sell their homes, many older Americans will not be able to afford to rent a habitable, safe place to live. Some can barely afford to the pay the property taxes on their current paid-off homes because of rising real estate assessments.

We need to protect our senior citizens in their retirement years. I strongly urge my colleagues to vote for my amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Utah.

Mr. HATCH. Mr. President, I rise today in opposition to the Feingold amendment. I explained yesterday why I oppose this provision and would like to summarize my remarks today.

First off, I commend Senator FEINGOLD's commitment to the elderly. He is very sincere in his efforts. We all are concerned about our senior citizens.

I have worked particularly hard on this bill to make sure there are provisions that protect the elderly along with women and children and I think that my colleagues who have worked with me on this bill recognize this fact. We have lots of protections in this bill.

Senator GRASSLEY is the lead sponsor of this bill and he has a long track record of working with the elderly on Social Security and Medicare and other issues, as I do. I serve on the Finance Committee with Senator GRASSLEY, who chairs that committee. We were both proud to have played a role in bringing prescription drug coverage to our seniors under the Medicare program in the landmark medicare reform bill that was enacted last Congress.

My opposition to this amendment has nothing to do with the elderly. I believe that this bill takes their concerns to heart.

I would not object if every State in the Nation passed laws that would put a similar floor—or a higher floor—in their respective homestead laws. But that choice belongs to the States, and not the Federal Government. There is a long history in bankruptcy law of deference to States on issues like homestead provisions.

The hard reality is that nearly every State in the country has vehemently defended their homestead laws. If you do not believe me you can ask the Senators from States like Texas, Florida, and Kansas. They have all been involved in reaching the compromise that has been achieved in this legislation on this issue over the past 8 years.

It is a grand compromise that both sides of the Hill will accept if we vote down the Feingold amendment. The Feingold amendment would bring the bill down.

If some States wish to change their laws, that is their prerogative. A key purpose of this bill, and the purpose of the current homestead provisions, is to curb fraud and abuse.

The provisions of S. 256 impose a 10-year look back for fraud. They impose a 2-year residency requirement that is designed to prevent wealthy debtors from moving from States with low homestead exemptions to States with high or unlimited exemptions and then filing for bankruptcy. They are a compromise—a balance—of States' rights and Federal imperatives under bankruptcy law, and we must let the provisions stand as written. This amendment will upset that balance and could act to bring this bill down.

The reason has nothing to do with a hostility to the elderly, or to any other class of persons, but because the homestead provisions have taken years to negotiate and are the result of difficult choices and compromises. There are many members of this body who would like to see the homestead provisions changed in some fashion, but to accommodate them any further than what presently exists in the bill would likely force other Senators to oppose the legislation.

I urge my colleagues to reject the Feingold amendment, however well intentioned it may be, because this is a grand compromise of a bill that I don't believe the distinguished Senator from Wisconsin has ever supported. The fact of the matter is, if his amendment were agreed to, he would not support this bill. And the reason he would not is because he would not agree to the compromise we have in the bill which the vast majority of Members of Congress on both sides of the aisle in both Houses have agreed to.

I hope we can vote down the Feingold amendment.

I reserve the remainder of my time.

Mr. FEINGOLD. Mr. President, first, I want to correct the record. The Senator from Utah is incorrect that I never supported a version of the bankruptcy bill. I did, in 2002 when there was a vote on the Senate floor. Our late colleague from Minnesota and I used to have a little contest about who was the only one to vote ''no'' on a bill the most. This was a case where Senator Wellstone voted ''no'' and I actually voted ''aye'' for a version—a reasonable, balanced version—of a bankruptcy bill when it appeared on one occasion during the past 7 years. Unfortunately, that bill was not accepted and was basically rejected out of hand by those in the House who insisted on an unbalanced, unfair bill.

That is exactly what we have before us today. I reject the argument that this amendment in any way, shape, or form endangers this bill. How can that be the case?

The Senator from Utah has said this bill affects States rights with regard to the homestead exemption. This bill does affect the rights of Florida and Texas to have an unlimited homestead exemption, as it should. The Federal Government has an interest here in making sure wealthy people cannot abuse the system. I support that goal of stopping fraud.

The Federal Government also has an interest in making sure our senior citizens have absolute minimum protection for their homes when they are forced into bankruptcy, particularly because of unanticipated health care costs.

I am not creating some new precedent in this bill. This bill already changes state rules on the homestead exemption, and my amendment has absolutely no impact on the delicate balance achieved with regard to the high end of the homestead exemption.

This amendment is not intended to harm the bill, and, in fact, it does not harm the bill. It is simply trying to bring an element of fairness and balance to the bankruptcy laws with regard to senior citizens who might lose their homes.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, it is my understanding the distinguished Senator from Alabama will have 2 minutes before the Akaka amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. He does not need time from my time at this time.

The PRESIDING OFFICER. There is 1 minute of debate on the majority side.

Mr. HATCH. Mr. President, I would be happy to yield some of my time at this point, and then I will have an additional 1 minute immediately before the vote.

Let me answer my dear colleague from Wisconsin. My point is he has never been for this bill. Frankly, he knows this language in this bill is the result of tremendous compromise between the House and the Senate. His amendment, would bring this bill down. All of us would like to make changes. This is a complex bill. I think

all of us, if we could be dictator for a day, would put our own imprint on this bill. But this is 8 years of work, and I don't want to see this bill brought down because one person doesn't agree with one provision. In the viewpoint of the distinguished Senator from Wisconsin, most of the protections he doesn't agree with. He is not going to vote for this bill, whether his amendment is agreed to. All his amendment does is create a confusion and a situation where literally this bill could go down.

We have to get this bill in a form which the House will accept, and this is the form in which the House will accept it.

I yield the remainder of my time to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 15

Mr. SHELBY. Mr. President, I appreciate the time.

I rise in opposition to the upcoming amendment submitted by Senator AKAKA. The amendment would amend the Truth in Lending Act and impose significant new compliance mandates and disclosure requirements on lenders.

This amendment makes considerable changes to an area of law squarely within the jurisdiction of the Banking Committee which I chair, and I hope it will not be included in the bankruptcy bill. This is simply not a dispute about asserting the Banking Committee's jurisdiction which we have here. The Akaka amendment, if it were agreed to, would be a significant change to the Truth in Lending Act.

This is a highly complex law, and amendments to it, must be considered carefully, and should be considered in the committee first.

I will be glad and happy to work with the distinguished Senator from Hawaii in that regard. But we have not had an opportunity to look at this, nor to conduct an appropriate examination of the substance involved in the amendment, and, therefore, there is no record upon which to base a judgment here with respect to the soundness of the provision. I don't believe this is either the time or the place for this amendment.

I will oppose the amendment.

VOTE ON AMENDMENT NO. 17

Mr. HATCH. Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment.

Mr. FEINGOLD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk proceeded to called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

The result was announced—yeas 40, nays 59, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—40

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

NAYS—59

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

NOT VOTING—1

Inouye

The amendment (No. 17) was rejected.

AMENDMENT NO. 15

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to the vote on amendment No. 15.

Who yields time?

The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I ask unanimous consent that Senator LINCOLN be added as a cosponsor of this amendment.

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

Mr. AKAKA. Mr. President, S. 256 includes a requirement that credit card issuers provide additional information about the consequences of making minimum payments. However, this provision fails to provide the detailed information for consumers on their billing statement that our amendment would provide. Our amendment will make it very clear what costs consumers will incur if they make only minimum payments on their credit cards. If this amendment is adopted, the personalized information they will receive for each of their accounts on their billing statements will help them make informed choices about payments they choose to make toward reducing their outstanding debts.

I urge my colleagues to support this amendment that will empower consumers by providing them with details and personalized information to assist them in making better informed choices about their credit card use and repayment. This amendment makes clear the adverse consequences of uninformed choices, such as making only minimum payments, and provides opportunities to locate assistance to better manage their credit card debt. I thank my cosponsors, Senators DURBIN, LEAHY, SARBANES, and LINCOLN, for their support.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 1 minute.

Mr. SHELBY. Mr. President, this is a very complicated amendment. This is in the jurisdiction of the Banking Committee. It deals with the truth in lending law. We have not had any hearings on this issue. I would be glad to work with the Senator from Hawaii. We can sit down and see if we can do something on this issue. To bring it up on the Senate floor and try to make it part of the bankruptcy bill and bypass the Banking Committee is something we should not do. I hope we will not. I oppose the amendment.

Mr. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The yeas and nays are ordered.

The question is on agreeing to the amendment of the Senator from Hawaii.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

The result was announced—yeas 40, nays 59, as follows:

[Rollcall Vote No. 15 Leg.]

YEAS—40

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

NAYS—59

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

NOT VOTING—1

Inouye

The amendment (No. 15) was rejected.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 28

Mr. KENNEDY. Madam President, I ask unanimous consent that we set aside any pending amendments. I send to the desk two amendments and ask they be immediately considered.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 28.

(Purpose: To exempt debtors whose financial problems were caused by serious medical problems from means testing)

On page 19, between lines 13 and 14, insert the following:

''(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is a medically distressed debtor.

''(B) In this paragraph, the term 'medically distressed debtor' means a debtor who, in any consecutive 12-month period during the 3 years before the date of the filing of the petition—

''(i) had medical expenses for the debtor, a dependent of the debtor, or a member of the debtor's household that were not paid by any third party payor and were in excess of 25 percent of the debtor's household income for such 12-month period;

''(ii) was a member of a household in which 1 or more members (including the debtor) lost all or substantially all of the member's employment or business income for 4 or more weeks during such 12-month period due to a medical problem of a member of the household or a dependent of the debtor; or

''(iii) was a member of a household in which 1 or more members (including the debtor) lost all or substantially all of the member's alimony or support income for 4 or more weeks during such 12-month period due to a medical problem of a person obligated to pay alimony or support.''.

AMENDMENT NO. 29

The PRESIDING OFFICER. The clerk will report the second amendment.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 29.

(Purpose: To provide protection for medical debt homeowners)

On page 191, between lines 11 and 12, insert the following:

SEC. 322A. EXEMPTION FOR MEDICALLY DISTRESSED DEBTORS.

Section 522 of title 11, United States Code, as amended by sections 224, 308, and 322, is amended by adding at the end the following:

''(r)(1) For a debtor who is a medically distressed debtor, if the debtor elects to exempt property—

''(A) under subsection (b)(2), then in lieu of the exemption provided under subsection (d)(1), the debtor may elect to exempt the debtor's aggregate interest, not to exceed $150,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor; or

''(B) under subsection (b)(3), then if the exemption provided under applicable law specifically for such property is for less than $150,000 in value, the debtor may elect in lieu of such exemption to exempt the debtor's aggregate interest, not to exceed $150,000 in value, in any such real or personal property, cooperative, or burial plot.

''(2) In this subsection, the term 'medically distressed debtor' means a debtor who, in any consecutive 12-month period during the 3 years before the date of the filing of the petition—

''(A) had medical expenses for the debtor, a dependent of the debtor, or a member of the debtor's household that were not paid by any third party payor and were in excess of 25 percent of the debtor's household income for such 12-month period;

''(B) was a member of a household in which 1 or more members (including the debtor) lost all or substantially all of the member's employment or business income for 4 or more weeks during such 12-month period due to a medical problem of a member of the household or a dependent of the debtor; or

''(C) was a member of a household in which 1 or more members (including the debtor) lost all or substantially all of the member's alimony or support income for 4 or more weeks during such 12-month period due to a medical problem of a person obligated to pay alimony or support.''.

Mr. KENNEDY. Madam President, I had the opportunity to talk with our floor leaders. Because my amendments are related, I am prepared to discuss or debate these issues and to consider them together, if it is agreeable with the other side. Then we could enter into a time agreement and leave that up to the leadership as to when we might move ahead and vote on them, hopefully back to back, with a brief interlude of, I think, probably 4 minutes evenly divided, so we would have a chance later in the day to describe them.

I do not offer that as a unanimous consent request at this time. I just mention on the floor now that it is my understanding that it will be worked out by the leadership, so Members have some idea as to how we are going to proceed.

These two amendments relate to the health care challenges so many of our fellow citizens are facing in with regard to going into bankruptcy. We know at the present time there are 1.5 million people who go into bankruptcy every year. Half of those people go into bankruptcy because of medical bills. About three-quarters of those individuals who go into bankruptcy because of the medical bills have health insurance, but nonetheless the explosion of costs in health care have added such a burden to these families that they have had to go into bankruptcy. It does seem to me if the purpose of this legislation is to try to deal with spendthrifts and those who are abusers of credit, we ought to be able to distinguish between hard-working Americans, basically middle-class working families who have health insurance or those right on the margin who wish they had health insurance, who perhaps lost their health insurance because of a change in their employment, and then suddenly are facing catastrophic health needs, and those who irresponsibly acquire debt.

What are those types of health needs? We start off with cancer. The average out-of-pocket expenditure, even for families who have insurance, is approximately $35,000. That often is enough to trigger a family to go into bankruptcy because of the limitations it puts on the income of the families. Often it is one of the breadwinners of the family who becomes ill, and it is the loss of that breadwinner's income, not only the medical bills, that in frequent instances drives that family into bankruptcy. I will give some examples of why that happens.

It does seem to me we should not apply the harsher provisions—and they are harsher provisions, what is called the means test—the harsher provisions that put an additional penalty on those families than already exists in the current bankruptcy law. That effectively is what one of the amendments addresses.

The second amendment says if those families are going to go into bankruptcy, then we are going to let them preserve their homestead to the extent of $150,000 of equity in their primary residence through a homestead exemption.

The average cost of a house in this country is $240,000. It is vastly more expensive in my part of the country. In Massachusetts the cost of housing is the second highest in the country. In many of the areas in the Northeast, in the coastal areas, and even in the heartland of this Nation, housing is much more than $150,000.

What we are trying to say is that it is hard enough, meeting the personal burdens of illness and sickness and disease—in the case I just mentioned in terms of cancer, but those conditions apply as well if you have heart disease, stroke, other kinds of serious illness, or if you have a child who has serious illness: autism, spina bifida, the whole range of challenges which infants have. More often than not, the health insurance proposals, most that I have seen, exclude any complications in the first 10 days of life. That is the time the illness or sickness is detected in many of these children, and that is when the economic spiral down starts.

What we are saying in these two amendments is, No. 1, it is difficult enough to face the pain and anxiety of a serious medical condition. You should not have the more punitive provisions under the means test. We can go into details about how they would be expected to pay a good deal more from the means test even though under the current law they would not have to. They would have their assets and their liabilities and there would have to be a determination for the payment, what assets they have, and then they could start fresh. Under the means test it would mean further obligations for the next 5 years, and the real question is how some of these individuals would be able to survive and, secondly, to say these families face a serious enough problem and they should not lose a home where they have equity of $150,000 or less.

There will be those who say this bill is not about our health care system, which has its good points and has its bad points. We are not debating that today. We ought to debate comprehensive health care for this country, and ways we try to get a handle on health care costs—that is all well and good. But what we have to do if we are going to try to be honest to the consumers and families of this country is talk about what the implications of this legislation are going to be.

One of the serious facts that remains is for those people who have serious indebtedness through no fault of their own, who have worked hard, played by the rules, have gotten health insurance or in other instances lost their jobs, they are not going to be penalized and forced into indentured servitude, basically, for the credit card companies—because they are the principal beneficiaries of these provisions. So it is only fair we say that.

People will say we have homestead laws in this country. They apply across the Nation. The fact is, in most of the parts of the country, the homestead provisions are less than $25,000—$25,000 or less. The fact is, this legislation applies to 50 States, not to one State or two States. It applies to 50 States. It has application to all the people in all 50 States. So if we are going to apply something to all 50 States, why not at least have some uniformity? We think it is difficult enough and tragic enough that you are going to have a health challenge that is going to wipe out your family and perhaps even cause death; we are not going to take a home away that is worth $150,000.

Those are the facts. Those are essentially the provisions. I will mention them in greater detail.

The first amendment exempts from the means test any debtor whose severe medical expenses have caused financial hardship and forced them to file bankruptcy. Financial hardship is defined in the amendment as one of the following: Being out of work for a month or more or unreimbursed medical expenses totaling 25 percent of your income. This is your out-of-pocket, after all the other expenses—25 percent of your income. We estimate that about 20 percent of all bankruptcy filers—this doesn't even reach all of those who are going to be medically bankrupt, but it would reach about 20 percent of all bankruptcy filers in this category. They would be exempted from the means test through these provisions.

The proponents of the bankruptcy bill have said the goal of the bill is to force those individuals who run up bills irresponsibly to take greater personal responsibility.

They claim that people are going to the mall making frivolous purchases such as plasma televisions and designer clothes and then going to bankruptcy court to discharge their debts. Nothing could be further from the truth for the thousands of individuals who are forced into bankruptcy to deal with the debt they were forced to take on to cope with serious medical expenses and the loss of income when they are unable to work due to serious illness or injury.

We had testimony from Professor Elizabeth Warren of the Harvard Law School last week making clear that more than half of those filings for bankruptcy have been forced to do so at least in part due to medical problems and their aftermath. If the goal of the bill is to deal with those individuals who some feel are abusing the bankruptcy process, we ought to protect those individuals who are forced into bankruptcy through no fault of their own.

We will listen to the proponents of the bill say: Look, we want to have people responsible here in the United States of America. Those people who go out and buy the fancy yachts, go to the mall, run up bills, ought to be held accountable. Absolutely, I say. Put me on as a cosponsor. But that ain't what this bill does. As a matter of fact, there is an enormous loophole in this bill that ought to shame its proponents who have left it in there with regard to spendthrifts. We will come to that later.

Let me finish a brief description of these two amendments.

Those who go to bankruptcy court because of cancer or diabetes and heart attacks have not been irresponsible. Those who file for bankruptcy to deal with medical debts incurred when a child was born early with severe complications or an elderly parent needing costly prescription drugs or placement in a nursing home are not irresponsible. These clearly are not the type of debtor the proponents of this bill say they are; the kinds of debts that the proponents of the bill are trying to address. They deserve a chance to make a fresh start, and a specific exemption from the applications of the means test gives them that chance. They will still be subject to the bankruptcy law as it is today but not the additional kinds of punitive aspects that exist in this proposed bill under the means test.

The second amendment provides that medically distressed debtors be allowed to protect, at a minimum, $150,000 of the equity in their primary residence through a homestead exemption.

The enormous increase in medical debt and the bankruptcy cases caused by medical debts, along with the significant increase in real estate prices over the recent years, have led to a new and rapidly growing problem. Families who face insurmountable debt problems following serious medical problems are faced with obtaining relief from their debts in bankruptcy only if they give up their homes. A family should not have to lose their home to obtain relief from debts caused by serious medical problems. These families should not be forced to choose between debt relief and losing their modest homes.

In nearly half of all States, homestead exemptions are less than $25,000. Several States have no homestead exemption. People facing bankruptcy in these States are often forced to give up their home to obtain debt relief.

In a chapter 7 bankruptcy case, the family with equity greater than the State exemption limits can be forced to give up their home. In chapter 13, the family must pay the creditors an amount equal to the equity above the homestead exemption, which they cannot afford. The amount of equity a homeowner can protect in bankruptcy has not kept up with the rise in home prices. This change of $25,000 has been there for years and years. I don't know where you can find a home in this country for $25,000. With incomes of $800 or $1,000 per month, they could live in their current homes, which may be paid off, and have low monthly costs. If they are forced out of their homes, they can't afford to rent a decent place to live. Effectively, these homeowners have no bankruptcy relief available to them. They sell the home, and they are told, OK. They are on a fixed income of Social Security, getting $1,000, perhaps, a month. How are they going to be able to afford to rent the places available to them at $800 to $1,000 and have enough to live on?

The notion of forcing people out of their homes after an illness or an accident is made more outrageous by the fact that in a handful of States, debtors of all kinds—famous sports figures, doctors who drop their malpractice insurance, real estate tycoons—can shelter millions of dollars in homestead.

Do we understand that?

In this legislation, there is a handful of States where individuals can shelter their homes from creditors who won't be able to get access to it. Yet when we say, OK, let us just protect others in other States up to $150,000, they say, No, we are not going to do that, no, because you know the States ought to make the decision. This bill applies to 50 States. If you are going to take that position, why not wipe out the exemption that exists for these handful of other States? Where is the fairness in this bill? Where is the fairness? Why should wealthy individuals be able to shelter their income in half a dozen States and escape all of the harshness of this bill and other hard-working, decent people who have lived in their homes over a lifetime find out their housing disappears as it goes into bankruptcy? Please. Where is the fairness? Where in the world is the fairness?

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. DURBIN. I want to make sure that people following this debate understand what is at issue.

The Senator is talking about someone who, because of the diagnosis of medical illness or treatment of a medical illness, ends up incurring a crushing debt they can't pay back, and their health insurance doesn't cover it. The Senator from Massachusetts is suggesting that those individuals who are

facing bankruptcy, at least when it is all said and done, have their homes to return to, to the tune of $150,000, which is a modest home in most places in America. Is that what the Senator from Massachusetts is talking about?

Mr. KENNEDY. The Senator is absolutely correct. The average cost of a home in America is $240,000. We are only talking at $150,000. I am sure the Senator can relate to us the kinds of situations that I see of these three-decker houses, not only in Boston but in many of the older cities and in my State where families have lived there for years and years. They see the increase in the water rate of $50 to $75, and they wonder how they are going to be able to afford it.

What we want to say is to those individuals who are faced with hardship, worked hard all of their lives, more often than not have been able to get health insurance but find out that health insurance is not enough. As a result of cancer, serious heart failure, serious illnesses, diabetes, or a child that needs special kinds of attention, they go in to debt—after it is all said and done, let them list their assets and their liabilities and pay what they need, but don't take their home away from them.

Mr. DURBIN. If the Senator will yield further for a question, as I understand, what the Senator is saying is that in some States you could have a person who was a compulsive gambler who went deeply into debt to the point that they faced bankruptcy, but if they are smart enough to take the remaining assets they owned and put them into a home to the tune of $1 million—if they pick the right State, such as Florida—that compulsive gambler, irresponsible person who goes to bankruptcy court will be protected by the law of Florida, be able to keep their multimillion dollar home. Yet in a State such as Massachusetts or Illinois, if someone faces devastating cancer diagnoses, treatments that costs more than they can ever pay back, they could go to bankruptcy court and loose their homes, but the gambler keeps his multimillion dollar home. In other States, the person who has a medical diagnosis they never expected ends up losing their home under the current law we are considering.

Mr. KENNEDY. Perhaps the Senator can explain how that meets any definition of fairness, how that meets any requirement of treating people equitably.

We have the proponents in the Senate Chamber; they ought to be able to explain that. They have resisted treating the families the same in all parts of the country. This is one of the fatal failures in this one area, the homestead area.

The Senator is absolutely correct. As the Senator knows, we are talking about individuals who have worked hard more often than not, have gotten health insurance and tried to provide for their families, but then that incident occurs, the cancer occurs, the heart failure occurs, the diabetes occurs.

We have a growing aging population. Increases in bankruptcy among the elderly have risen by two or three times in the last 5 years. The basic projections are increasing because they will have increasing health care needs.

We are saying to these individuals who have been part of this American fabric and have helped more often than not in fighting our wars, they have built this country, saved for their children, now they will end up getting thrown out of their home through no fault of their own because they are blighted with some form of cancer.

Mr. DURBIN. If the Senator will yield for a question, I will give an example of a family in my home State of Illinois and what happened to them. Ten years ago, Randall Lemmon and his wife Mary were living in Champaign, IL, downstate Illinois. His wife was diagnosed with an autoimmune disease, sceradoma, a connective tissue disease which can debilitate very quickly. Within months of her diagnosis, Mary experienced the loss of independent functioning and found herself needing assistance with even the most basic tasks in life. She eventually collapsed and went to a nursing home, which was not covered by the family's insurance. Eventually she died, leaving behind her husband, five children, and a $150,000 nursing home bill. As a result, they were forced into bankruptcy.

Currently, in Illinois you can only protect $7,500, up to $15,000 in the value of your home. What could anyone live in for $15,000? Here is Randall Lemmon with five children, and because he was forced into bankruptcy court he would lose his home.

Senator, you are saying, at the minimum, let him at least protect $150,000 in his home to raise the five children after his wife has died in a nursing home; is that what your amendment says?

Mr. KENNEDY. The Senator is absolutely correct. He gives an enormously persuasive argument.

These are hard-working people, as the Senator has pointed out, affected by an illness. They are getting caught up in the system.

This bill was supposed to be about spendthrifts. This bill does not take care of the sheltered income, as the Senator from Illinois points out. It does nothing about the corporate irresponsibility where the corporations go into bankruptcy and leave their workers high and dry and they walk off with the golden parachutes.

We see health care coverage lost for these families who have paid in for 20 or 30 years. WorldCom closed down, Polaroid closed down, Enron closed down, their health benefits are cut off, they get cancer, the bills run up, and what does this bill do? It puts them into indentured servitude to the credit card companies.

We call that fairness? That may be the priority of some in this body, but it is not mine. Who do we in this body represent? The credit card companies who make record profits? They are the principal beneficiary of this legislation: $30 billion in profits last year, and they want $35 billion. The best estimate is the credit card companies are going to get $5 billion more out of this bill.

Who are they going to get it out of? They are going to get it out of that family the Senator from Illinois just discussed.

That is what we are about in the Senate? We have the problems of unemployment, the escalating costs of prescription drugs, 8 million of our fellow citizens unemployed, school tuition going through the roof, and we are talking about an additional $5 billion for the most profitable industry in America. Hello. Hello. That is what we are debating here. It is extraordinary.

I heard this morning that some of our friends on the other side went up to the press to announce their poverty program. Imagine that. This will drive more and more people into poverty, and our friends on the other side announce how they will address poverty in this Nation. And what are we seeing happening with the increase of poverty for children? For the first time, again, infant mortality is going up for minorities in the inner cities.

We have an explosion of asthma in the inner cities of this country, twice the deaths we had 5 years ago as a result of deterioration of conditions. My gosh, and we are debating the credit card company profits. This is what we will do to our fellow citizens?

Let me mention who else is affected. Christopher Heinrichs was diagnosed with melanoma in 2002 after visiting a dermatologist for a routine consultation after discovering a small discoloration. He was given a prognosis of 5 years to live. He was director of operations for a truck parts company. His wife Deborah was a $14-an-hour office worker. They had a joint income of $140,000.

Listen, middle America, listen to what happened to this family. Christopher had good health insurance that covered 90 percent of his hospital costs. He also had disability benefits and life insurance through his employer. The 10 percent cost sharing on Christopher's prescription drugs cost $100 a week. Copayments for three surgeries, seven rounds of chemotherapy added up. Christopher continued to work but was laid off from his job a year after his diagnosis. He had to pay $969 per month to keep his health coverage after he lost his job. Christopher's health insurance had a $100,000 maximum benefits cap which they reached at the same time they learned the cancer had spread to his colon. They had to give up the family car and were ultimately forced to file for bankruptcy in the summer of 2003 and discharge their debt. Christopher died in April 2004 at the age of 47, leaving his widow and two sons, Joshua, 17, and Travis, 14,

and left an additional $90,000 in hospital bills for costs after bankruptcy. They also have had a bill for $3,100 for Christopher's cremation.

And we are going after this family with a means test, an additional kind of burden to squeeze out whatever this family is going to be able to try and put together for the next 5 years? That is what the means test does.

Where do you think you get the next $5 billion for the credit card companies? They get it by squeezing these families for $35, $50 a month, $75 a month for the next 5 years.

Kelly Donnelly was diagnosed with skin cancer, September 2003. Her family lived in Oswego, NY, with a joint income of $32,000. They owned a three-bedroom house with a daughter and a second on the way. When Kelly, 26, became too weak to work, she had to quit her drugstore job, leaving the family with only $20,000 in income. Even though Andrew received health insurance from his job, copayments from Kelly's treatment and medication for the new baby who was delivered prematurely so Kelly could undergo cancer surgery, totaled $330 a month. The couple lost their house, filed for bankruptcy in August 2004, were forced to move to an apartment, had to give up the family dog because pets were not allowed there. Because they had defaulted on electric bills they had to put down a $500 deposit to turn on the power in their new apartment. Their medical bills totaled $20,000.

This is what is happening. We are going to put additional burdens, besides the existing bankruptcy law, on those people? This bill does.

I am going to speak about two individuals whom I will call ''TT'' and ''ST'' from Minneapolis, MN. They do not want their names mentioned. They had good medical insurance from ''T''s job with the State of Minnesota, but when ''T'' retired, he could not afford the $941 per month for his health insurance. He paid for a few months, and then he couldn't anymore. ''S'' was diagnosed with breast cancer in February 2004, after being misdiagnosed in September 2003. ''S'' was misdiagnosed, as I mentioned, in September 2003, when she had health coverage. The first 3 months of her cancer treatment cost $26,000, and they have no health insurance. They were forced into chapter 13 bankruptcy to try to save their home. Unfortunately, they were unable to make enough to pay the chapter 13 payments to save their home, and they ultimately had to sell it for less than it was worth before it was foreclosed and convert their chapter 13 filing to a chapter 7 case.

We have constant examples. We know one out of four people die from cancer, and we know about one out of four die from heart disease. We know that today. We can look around at any kind of group. These are the statistics. If you have good health insurance, with the exception, perhaps, of the health insurance we have in the Congress of the United States, which we do not extend to the American people—we are pretty well protected, but not those people out there. I am tired, when one person tries to extend the same kind of health care we have to people out there, of people on the other side who say: Well, we are not going to support you. The problem is the health care problem, and we ought to deal with that. This is a bankruptcy issue.

Come on. Come on. They oppose us when we try to pass health care legislation, and then they oppose us when we try to deal with the health care problems that are going to be impacted by the bankruptcy bill. It does not work that way. At the same time, we have all the circumstances that take place in the corporations.

I want to mention the various groups, once again, that are supporting us. We have the American Bar Association. We have about 80 percent of the representatives of the trade union movement, the Alliance for Retired Americans. We have the Consumer Federation of America. We have the Leadership Conference on Civil Rights, which understands that this, as well, affects many minorities in this country. We have the National Women's Law Center because of the impact of this legislation on women. We have Physicians For A National Health Program, some 2,000 doctors—2,000 doctors from across this country—who understand and say: Do not pass this bill because of the health implications. Don't do it, Senate, if you care about what is happening to your fellow citizens out there across this country. They are facing enough challenges with the explosion of health care costs, the explosion of prescription drug costs, and the dramatic decline in health care coverage. Don't do this to them. It is too unfair. It is unwise. But no, no, we are going ahead.

We have support from group after group after group. I think it is time we give consideration and priority to the workers in this country.

I will mention, quickly, a final couple of points to give a bit of an overview about where we are in these medical bankruptcies. Annually, half result from illness; nonmedical causes, 54 percent; medical causes, 46 percent.

This is from the Health Affairs study that was done this year.

We know there is a dramatic increase in the number of uninsured. So it makes a good deal of sense we are going to have an increased number of medical bankruptcies because we are seeing the total number of individuals who are not being covered dramatically increase. Now it is up to 45 million. With all respect, the reason it did not go up higher, is because we had the CHIP program that enrolled several million children. If we had not done that, these figures would be right up through the roof.

Here is the cost. We have not only the coverage issue, but you see the cost of single coverage in 2000 at $2,400; in 2004, $3,600. For families, it has gone from $6,300 to $9,950. There has been an explosion in the costs, an explosion in the number of companies that do not provide coverage, and an explosion in the number of companies switching to part-time employees who do not get benefits like insurance.

We see the difference in the cost for Medicare premiums and Social Security. You wonder why this is a particular burden on seniors? Listen to this. Basically, seniors paid for their Part B premiums with their COLA increases in Social Security. But what we are finding out now is they are falling farther and farther behind in that ability to pay. What you are finding out now is the increase in premiums is 72 percent over the period of the last 4 to 5 years. For Social Security, it is 12 percent. So increasing numbers of seniors on Social Security are unable to keep up with part B premiums. And this does not even include the new prescription drug bill, where you are going to find out it is even more costly.

There are 3.9 million Americans who are affected by bankruptcy. You have 700,000 dependents, 1.3 million children, and the bankruptcy filers, 1.9 million—effectively 4 million of our fellow citizens who are affected by this provision.

As my friend from Illinois pointed out, when you take a look at the failure to deal with, on the homestead issue, the high rollers in States that have high homestead protections versus working families in 90 percent of the other States, that is unfairness.

In my State of Massachusetts, if you talk about the problems of bankruptcy, on the lips of most of the workers would be Polaroid, that great company that started with Ed Land, who was an absolute genius, who developed instant film. And finally, after he left, the company ran into difficult times, and they went bankrupt. I will mention what happened to those individuals.

Polaroid filed for bankruptcy in 2001. In the months leading up to the company's filing, the corporation made $1.7 million in incentive payments to a chief executive, Gary DiCamillo, on top of his $840,000 base salary. The company also received bankruptcy court approval to make $1.5 million in payments to senior managers to keep them on board. These managers, collectively, received an additional $3 million when the company assets were sold off.

By contrast, just before Polaroid filed for bankruptcy, it canceled the health and life insurance for 6,000 retirees, coverage for workers on long-term disability.

Do you understand what we are saying here? Here you have these individuals who lost their coverage. Can you imagine the number of those individuals who do not have health insurance and then run into serious health problems, cancer or heart disease? What happens to them?

This is a typical example. We have other examples of corporate abuse which I will come back to. I hope the

Senate—we might not be accepting a lot of amendments—but I would hope the managers could find a way to accept these two amendments. It would make an enormous difference in terms of the legislation and the fairness and its implications for middle America.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I sat here and listened to my dear colleague from Massachusetts, and almost everything he has spoken about is a flaw in the current bankruptcy system we are trying to change. It is the current bankruptcy system that we have been trying to change for 8 solid years. And guess who one of the principal voices against changing it is? Why, none other than my distinguished friend from Massachusetts, and my distinguished friend from Illinois, who make these great populous arguments on the floor that sound so good. I do not want to characterize them in my Utah terminology, but they are not accurate.

How is that for being a person who uses discretion?

If you listened to the distinguished Senator from Massachusetts, you would think this country can spend trillions of dollars solving every person's problem. I have been here 29 years. I have never heard the distinguished Senator from Massachusetts once ask: Where are we going to get the money to pay for this? How do we pay for this? How do we justify it?

It is easy to talk about taking care of everybody in every way, universal health care, and to decry a Medicare reform bill that adds no less than $400 billion, but maybe as much as $750 billion now—according to CBO, OMB, and other analysts—and say it does nothing for the poor when that is exactly what it does do, a lot for the poor.

In the 8 years we have tried to correct these infirmities in the bankruptcy bill, we have not had any help from many who are speaking on this floor criticizing this bill today. They have never been for any change unless it is their change in bankruptcy, changes they could not get through the Senate floor. And we have come up with a bill that has been basically passed by huge majorities every time it comes up on the floor because we are trying to correct some of the things the distinguished Senator from Massachusetts is complaining about.

Yet I do not believe—and I can't speak for him—that we have a chance of having him vote for final passage of this bill. It may be because he differs with part of it, as I do. But I am trying to do the best we can in two legislative bodies that have great difficulty passing legislation as complicated as this with as many nuances and changes as this will make in the current laws that will be for the betterment of people in our society and in our country today.

I rise today in total opposition to these two Kennedy amendments. I commend Senator KENNEDY for his longstanding commitment to health issues. Most of the health care bills that work in this country are Hatch-Kennedy or Kennedy-Hatch bills over the last 28 years. He knows he can't accuse me of not having compassion for the poor and for those who have difficulty. We wouldn't have passed them had it not been for bipartisan efforts of Republicans and Democrats. So don't let anybody get on this floor and act as though only one side cares about the poor. That is not only a joke, it is a sad joke at that.

I know how devoted the Senator from Massachusetts is, and I share his general concerns about people in our society today who are hard-working people. However, I do not believe these two amendments are the answer to their problems. We accepted the Sessions amendment yesterday. It speaks directly to the circumstances surrounding serious medical conditions, which would be a major change over current law that I believe the distinguished Senator from Massachusetts and others, including the distinguished Senator from Illinois, will vote against in the end because they don't agree with some aspects of this bill. I don't agree with some aspects of this legislation, but I have worked my guts out to try and get a compromise here that will help the poor, that will help our society and will make people more honest, that will stop some of the fraud and abuse.

To continually make this sound as though it is a credit card company bill—give me a break.

I note the distinguished Senator from Massachusetts mentioned the Warren study when he says that half or thereabouts of the people go into bankruptcy because of medical conditions. That study is so flawed, nobody who is in their right mind is going to accept everything in it. First of all, it includes all gambling; that is a medical condition. Drug abuse and alcohol abuse, they are medical conditions. I agree maybe that may be. But those are voluntary medical conditions. It may be somebody is crazy because they gamble all the time. I have known compulsive gamblers. But is it a medical condition that justifies allowing people to cheat their creditors, as is going on in this country today? I don't think most people would agree with that. If you look at the statistics in the Warren report, you have to say: My gosh, why would anybody rely on that?

I believe it is worth pointing out that that report includes gambling debts as a medical condition under the rubric of medical expenses. Let's get real.

This bankruptcy bill is fair. It is needed. I pointed out several abuses yesterday, and I am sure will point out more before this debate is over.

The issues the distinguished Senator from Massachusetts has raised are important ones, as far as I am concerned. Make no mistake about it. But I think we ought to change current law to address them. This bill does to a large degree.

All we hear from Democrats over the years is: We need a means test so the rich pay more. Why are they suddenly against a means test to protect the poor, a means test that requires those who can pay something against their debts rather than every 5 years go into bankruptcy after running up bills galore? Why shouldn't they have to pay or at least try to pay? A means test protects those who are designated poor. And frankly, there are other rules in this new bill that will protect those who are above the means test better than current law.

I would suggest to the distinguished Senator from Massachusetts, if he wants to correct some of these problems—all of which he has raised under current law as though they are going to be caused by this bill—he ought to vote for this bill, because it takes dramatic steps to change in current law the things he has been complaining about and that I happen to be concerned about as much as he is and others on this floor as well on both sides.

For 8 years we have fought to bring both sides of this floor together. For 8 years we have fought to bring both Houses of Congress together. For 8 years we have tried to correct these deficiencies in the Bankruptcy Code. This bill doesn't correct everything, but it does make strides. It does make real efforts to try and not only be fair but to get people to be responsible for their debts when they have the ability to be responsible for their debts.

The issues the distinguished Senator from Massachusetts has raised are important ones. Make no mistake about it. But let me shine a little more light on these issues. The people the distinguished Senator from Massachusetts and the distinguished Senator from Illinois have held out as victims of the means test will be in fact protected by that test. That is what is amazing to me, how we can hear these populous arguments on the floor as though that is reality. We have heard this so many times. As the decibel level goes up, the reality of those arguments is less and less real.

The Sessions amendment yesterday makes sense, trying to do something about what the distinguished Senator from Massachusetts is complaining about. The things he is complaining about are in the current law we are trying to change. The means test protects the poor.

Now are there going to be problems with any bill that comes out of the Congress? Sure. We have to make an effort to do the best we can to resolve these problems and this bill does make the best effort we can between both Houses of Congress to do so.

I might add that the other amendment of the distinguished Senator from Massachusetts provides a homestead exemption for medically distressed debtors. Well, medically distressed debtors should be taken care of under the Sessions amendment because he specifically provides for that.

We had a vote this morning on a homestead amendment. We all know we cannot accept the amendment. It is an issue for the States, pure and simple. The reason we can't is because after 8 years of careful, serious negotiations, after 8 years of that, we have arrived at a compromise that, though imperfect, is the best we can do. That is what legislating is all about. I wish we could make every bill perfect. Unfortunately, we have to deal with imperfect people. Some of us may think we are perfect and that everybody should do exactly what we think they should do. That isn't reality around here.

So we do the best we can. After 8 years, after multiple votes, and after votes overwhelmingly in favor of this bill, because it makes tremendous changes from current law that do protect the poor, and others as well, and those who are losing billions of dollars because of it—at least millions, because of fraud—we are trying to do what has to be done.

Let me make a few remarks about the Kennedy amendment and why it should be rejected. Yesterday, we acted to adopt the Sessions amendment by a broad 63-to-32 bipartisan vote. The Sessions amendment included medical costs as a factor to be considered under the special circumstances provisions under chapter 13. That amendment will allow those who make those decisions to determine whether people are going to be inordinately hurt by being pushed into chapter 13. You have to believe there are idiots in the system who will not resolve these types of major problems, especially the ones the distinguished Senator from Massachusetts has been talking about.

Please recall that under the so-called means test Senators DURBIN and KENNEDY are trying to vilify today—when they are always arguing for means tests for the rich—will only result in about 10 percent of those who file for bankruptcy will be required to repay any of their debts out of future earnings. That is right, only 10 percent right off the bat. Eighty percent of those individuals who make under the median income will ever face the prospect of paying past debts out of future earnings. Of the remaining 20 percent, only about one-half will ever be required to pay. When all is said and done, only about 1 in 10 of those who filed for bankruptcy will ever be required to pay past debt from future earnings under the means test.

Medical expenses will be eligible as a factor in determining if and how much money will be repaid by those relatively few—1 in 10—who qualify under the mischaracterized means test. That is not an onerous test; it is fair. It treats medical expenses fairly. That is what we accomplish with the bipartisan 63-to-32 basically overwhelming vote on the Sessions amendment yesterday.

Now, the Senator from Massachusetts opposes this bill. That is no secret. He has opposed every bill we have brought up here in the last 8 years. We should oppose his amendment because the bill already adequately responds to the subject matter of his amendment. By the way, again, all of the litany of bad things that are happening to people, and especially the hard-working poor, are occurring under the current bankruptcy system we are trying to change and make better.

I will also acknowledge that I wish I could make this bill even better. But in all honesty, we are to a point where if we want to correct the wrongs in society that are occurring in bankruptcy, this is the chance to do it, and then let us work in the future to correct what needs to be corrected in this bill. But this is the only chance we have to correct some of the ills the distinguished Senator from Massachusetts is bringing out here today. I commend him for being concerned about those ills, but if he is, he ought to be voting for this bill because we at least do something about it. It may not be exactly what he wants; it is not exactly what I want; but it is the best we can do when we consider this bicameral legislative body called the Congress of the United States.

Again, I want to speak in favor of S. 256—and I think I have been—the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This issue has become more important over the last 8 years, when we started to work on reforming the system. It is more important than ever today. Bankruptcies are up markedly.

Over the past decade, look at how they have gone up on this chart. From 1947, all the way up to 2003, you can see how, since about the late 1980s, it automatically shoots up like mad. I know people in Utah who run up all the debts they can for 5 years, then go into bankruptcy, and then they do it again. This is happening much more than it should. As we pointed out yesterday, we have more bankruptcies in 1 year now than they had in the whole Depression of 10 years.

The bankruptcy system can be improved. It seems unlikely that consumer bankruptcy abuses are going to get better without this legislation. I will recount some of the glaring facts about this problem. First, we are seeing more bankruptcies filed every year than in the entire decade of the Great Depression, as I have mentioned. Our economy has generally grown over the last 10 years, and we have enjoyed relatively low unemployment and low interest rates. But despite this, we continue to see record numbers of bankruptcy filings every year. Why is that?

One factor may be that too many people view bankruptcy as an easy way to erase their debts, rather than as a means of last resort. This affects all consumers. When creditors are left without payment, they have to pass these costs on to all of the rest of us. It costs us in terms of higher interest rates, higher downpayment requirements, shorter grace periods, higher penalty fees, late charges, and retailers are forced to raise prices, all because of the abuse of the bankruptcy system, which this bill would do a great deal to correct.

If you want to help the poor, vote for this bill because this bill will save the poor at least $400 a year, minimally, for each household. Bankruptcy can also cost job loss among those who are victims of uncollected obligations. Part of the problem with the current bankruptcy system is that it allows certain higher income individuals to wipe away debts that they can and should be required to pay. Some have mischaracterized provisions in the bill that require some individuals to repay past debts with future earnings. The provision in the bill—the so-called means test—applies only to those persons above the median income. Where a higher income debtor has the means to repay, the means test established in the bill would require such debtor to shoulder more responsibility in paying the bills they have incurred. For debtors below the median income—which is over 80 percent of all filings—there would be no presumption of abuse. But even for those above the median with means to repay a substantial part of their debts, a judge would still have the ability to allow a liquidation bankruptcy to proceed in cases of hardship.

This is not the onerous bill that some of my colleagues would have you believe. Throughout the course of the debate over the last four Congresses, we have had different arguments from opponents of this legislation. It is always the same opponents. Some of those failing arguments are rearing their heads again in this debate. And again, the arguments they are making basically criticize current law that we are trying to change with the bankruptcy bill, we believe for the better. Can you find some flaws in this? Of course, and so can I. But it is head and shoulders over current law and over some of the illustrations my friends on the other side have brought up.

Let me take a few minutes to dispel a few of the more prominent myths about the bill. First, some suggested that higher debt burdens have led to the dramatic spike in bankruptcy filings over the last 25 years. The basic measurement for establishing financial distress shows that this is simply not the case. The debt service ratio—a measurement of income to expenses—has remained relatively constant over the last 25 years, as this chart behind me illustrates. The bottom red line shows the bankruptcy filings per 1,000 families from 1980 up until 2001. The black line on the top is the debt service ratio. This shows that bankruptcies have not increased due to a decreased ability to make payments on debt obligations. Examining the lowest 20 percent of income earners shows that even when the debt service ratio in these categories declined or stayed the same, bankruptcies overall still climbed dramatically, as the next chart reveals.

The bottom line, as you can see, is consumer liabilities between 1979 and 2001. The red line represents consumer assets between 1979 and 2001. The green line happens to be the consumer net wealth between 1979 and 2001. They have all gone up—even the bottom line, the consumer liabilities—but not very much. The others have gone up much more. The consumer assets and consumer net wealth have gone up much more.

Another measurement of financial distress is net wealth, the amount of assets against liabilities. But this test, too, shows that even as net wealth has soared, as was shown on that prior chart, bankruptcy filings have soared as well.

This chart makes the point. The bottom line is revolving disposable personal income. That has gone up from 1959 to 2003. The red line is the nonrevolving disposable personal income. As one can see, that has gone down. The black line on top is the total disposable personal income which has basically remained the same, except it has gone up a little bit in these past years.

Another exaggerated myth is that increased use of credit cards is the cause for more and more bankruptcies. But, again, the facts strongly suggest this simply is not the case. When there has been an increase in the use of credit card debt, this was largely due to a substitution for other high-interest debt.

The chart behind me shows that while revolving debts, such as credit cards, have increased as a percentage of disposable personal income, there is a corresponding decrease in nonrevolving debt. The net effect is that overall consumer indebtedness has remained roughly the same.

Others have tried to argue that increases in housing costs are a major reason for skyrocketing bankruptcy filings, but the amount of income going into mortgage expenses has remained steady over the years. According to Professor Warren's book, ''The Two-Income Trap,'' which was cited favorably by the distinguished Senator from Illinois, Mr. DURBIN, yesterday, in the early seventies, mortgage payments constituted 14 percent of a typical family's income.

Here is a chart showing the allocation of income. The red part on the left, the large part, which is 46 percent, happens to be discretionary income. The purple small part is health insurance, and that amounts to 3 percent. Discretionary is 46 percent. The mortgage people are paying is now 14 percent, about the same as it has always been, in that little section of red. The yellow is automobile, which is 13 percent of income, and taxes are 24 percent.

In all honesty, 30 years later, according to Professor Warren, this percentage actually fell to 13 percent. As this chart shows, the mortgage went down to 13 percent. Obviously, attributing the rise in the bankruptcy rate to higher mortgage payments does not appear to be borne out by the facts. Further debunking this myth is the fact that default rates on mortgages have also remained fairly steady over the years.

Another prominent myth about this issue is that about 50 percent of all bankruptcy filings is caused by medical debts. We heard the distinguished Senator from Massachusetts in very excited terms talk about these type of debts, medical debts. Undoubtedly, there are many bankruptcies caused by medical debts. This is why this bill makes several exceptions for treatments of health expenses and health insurance, something that does not exist today. These exceptions do not exist today. This is why we were so pleased yesterday that the Senate adopted the Sessions amendment that explicitly identified medical costs as a factor to be taken under consideration by a bankruptcy judge in deciding whether there are special circumstances that affect a debtor's ability to pay.

But the study cited for the proposition that 50 percent of bankruptcies are medically related is misleading at best. This claim is based on the study conducted by Professor Elizabeth Warren, but this study does not even purport to claim that medical bills were the primary basis for half of bankruptcy filings, as the charts of the Senator from Massachusetts seem to indicate; the study merely claims that about half the filings were medically related. This is a distinction with a real difference, but we did not hear the difference as our friend from Massachusetts was describing this. Only a definition of the health problem that is stretched beyond recognition could lead to the conclusion that these filings were medically caused. The study actually classifies gambling as a medical cause. Gracious, come on. Give me a break. Gambling?

Finally, let us look at two other exaggerated explanations for bankruptcy filings: unemployment and divorce. With respect to unemployment, this chart shows that even as unemployment has dropped, bankruptcy filings continue to increase.

Let me refer to this next chart. The red dots represent the unemployment rate. It has been going down since basically 1981. The black dots show the bankruptcies per 1,000 families, and they have gone up dramatically, as one can see. If there was a correlation between unemployment and bankruptcy, we would have expected bankruptcy filings to decrease over the last 25 years, but this obviously has not been the case. In fact, just the opposite has occurred.

Again, on divorce rates, bankruptcies have increased by a huge percentage, even as we have seen a modest decline in the divorce rate over the last 25 or so years. The red line at the bottom shows bankruptcies per 1,000 households. Look how it has gone up since about 1987. The black dots represent the divorce rate per 1,000 households. That went up, but it is now headed down. That is a good thing for our society. I am glad to see that. But the bankruptcy rates keep going up.

The bottom line is that despite the low interest rates, low unemployment, steady debt ratios, and steady increase in net wealth, bankruptcy filings continue to set record highs. Frankly, these facts suggest another reason to explain the increase in bankruptcy filings is that it is simply too easy for some relatively high-income debtors to simply wipe away their debts and stick all the rest of us in society with them, even where they have the means to pay a substantial share of the obligations. It is absolutely unfair to saddle all consumers with the increased costs associated with these off-the-chart levels of filings. This bankruptcy bill we are debating today will cut down on some of these abuses and bring back some sense of accountability to the high-income debtors.

Let me say again, it is one thing to come on this floor and give these wonderful populist talks about how much they love to help the poor when, in fact, this bill will do more to help the poor than all those talks in the world. And to complain about this bill when what they are really doing is complaining about the current system, it is amazing to me.

The only thing I can conclude is some people who make these arguments actually must believe the people out there are really stupid and that populist arguments really count today, like they used to when people did not have the education Americans have today. That is what those populist arguments are all about. It is easy to stand on the floor, shake your fist, scream and shout, and talk about how bad things are when they are bad because we are not changing them. It is amazing to me, absolutely mind-boggling to me.

I respect anybody who wants to change these laws and make them better. The only way we are going to do that is to pass this bill, and the only way we are going to pass this bill through both Houses is to pass this bill without amendment.

If we want to make some changes, let's do it. We have now been 8 years through this stuff, and the same old tired, wornout saw arguments are still being made by the people who complain about the current system as though this bill is going to make the current system worse. It is going to make it better.

Again, I will acknowledge it is not a perfect bill. My gosh, nothing is around here. But it will make a great difference in some of the complaints that have been lodged against current law.

This bankruptcy bill we are debating today will cut down on some of these abuses and bring back some sense of accountability to these high-income debtors. It will stop some of the fraud and abuse that is going on. It will

make everybody a little more responsible. We put in a lot of other provisions that make corporate America more responsible as well.

Could we do more? I suspect we could, but not and pass the bill. That is my bottom line right now after 8 years of doing this, after passing it four times overwhelmingly in the Senate and overwhelmingly in the House but not being able to get it signed because the one time it did go to the President, President Clinton pocket vetoed it. So I urge my colleagues to join me in supporting this measure. I hope my colleagues will help us finally pass this important measure because it is long overdue. It will help to resolve an awful lot of the problems that we hear complaints about on the floor today by those who have done everything they could over the last 8 years to kill this bill.

If we passed both of the amendments of the distinguished Senator from Massachusetts, even if we could agree that they were good amendments—and they are not—I guarantee my colleagues he is not going to vote for this bill. He never has, and I do not think he ever will. His reasons are his own, and they are important reasons to him, but I suggest that if our colleagues really mean they want to do something about these awful current situations, this is the bill to do it with. If this bill does not prove to be everything that we would like it to be, let us work in the next session of Congress or immediately thereafter to start trying to make changes that might help.

This bill is a step in the right direction. It is a very important step forward, and we certainly should not allow any killer amendments on this bill that would make it impossible to pass once again.

Hopefully I have been fair to my colleagues. I have tried to be. But I cannot just sit here and let these type of arguments be made without some response, especially since I have heard them over and over again. The complaints are always about current law and some of the aspects of this bill that they just do not like that are essential in order to pass the bill.

So I hope my colleagues will vote against both of these amendments. I am going to do everything in my power to see that they are both defeated.

I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Texas.

Mr. CORNYN. Mr. President, like the distinguished Senator from Utah, the former chairman of the Judiciary Committee, I agree that this is an important bill whose time has come. As he said, it is not a perfect bill, but it may be the best that we are capable of. Frankly, there is a lot more we could do to make it better.

A few weeks ago, I introduced S. 314, the Fairness in Bankruptcy Litigation Act of 2005. Today, I filed amendment 30 to the comprehensive bankruptcy litigation before us, but at this time I will not call up the amendment. This amendment would provide much needed protection for consumers, creditors, workers, pensioners, shareholders, and small businesses—in short, virtually everyone who is a stakeholder in bankruptcy litigation in this country today. It would do so by reforming the rules governing venue in bankruptcy cases to combat forum shopping, otherwise known as judge shopping, by corporate debtors.

The sad fact is that today judge shopping is endemic in our bankruptcy courts and has led to the abuses of the law, abuses that challenge our national aspiration to be a nation that believes in and actually practices equal justice under the law.

My experience in my former capacity as attorney general of my State, particularly with the Enron bankruptcy, which has gained quite a bit of notoriety, opened my eyes to a very real abuse in our current bankruptcy system and the need to end the current practice of judge shopping. After seeing how that bankruptcy played out, I do not believe that we can only be concerned with the letter of the law. We need to be concerned as well with how that law is administered, venues where those cases are litigated, and necessarily with accountability and accessibility of working men and women, the creditors, and everyone else who is affected by bankruptcy litigation.

My amendment would prevent corporate debtors from moving their bankruptcy thousands of miles away from the communities and the workers who have the most at stake, and it would prevent bankrupt corporations from effectively selecting the judge in their own cases, because picking the judge is not far off from picking the result.

I know that my distinguished colleagues from Delaware do not like this particular amendment, and they have voiced their concerns to me directly and candidly, which I appreciate, but it is principally because their State is the beneficiary of the status quo with huge percentages of all bankruptcies occurring in the United States—that is, in all 50 States—ending up in Delaware and to a lesser extent in New York.

I believe the record is clear that forum shopping hurts people in the overwhelming majority of the States and necessarily the overwhelming majority of our citizens, and that this amendment, if adopted, would serve the national interest.

This reform is good government. It is good for the economy. It is good for consumers. To those concerned, as I have heard those concerns expressed so far in this debate that we have not done enough to combat bankruptcy abuses, particularly on the part of corporate debtors, I ask them to seriously consider this amendment. This amendment would implement a major recommendation from the October 1997 National Bankruptcy Review Commission report and has earned support by prominent bankruptcy professors and practitioners nationwide. It has also gained bipartisan support from people who have seen the problems of the current system up close, including numbers of attorneys general, 24 of whom, along with the Attorneys General of Puerto Rico and the U.S. Virgin Islands, have signed a letter in support of S. 314.

I ask unanimous consent that this letter be printed in the RECORD, following my remarks.

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

(See exhibit 1.)

Mr. CORNYN. This legislation has also been endorsed by the National Association of Credit Management and the Commercial Law League of America. This amendment also protects small businesses, and that is why it has been endorsed by the National Federation of Independent Businesses. Because it protects consumers, it is supported by the Consumer Federation. This amendment would protect and restore the integrity of our civil justice system, and that is why, as I said, it is endorsed by a bipartisan coalition of our Nation's State attorneys general.

This amendment would send a message that we recognize the danger of this growing crisis which negatively affects so many consumers and workers and that we are committed to achieving fairness and truly comprehensive bankruptcy reform.

Sadly, our current bankruptcy venue law has become a target for enormous abuse. It is a problem that has been well documented by scholars in the field, most recently in a comprehensive book published earlier this year by UCLA law professor Lynn M. LoPucki, as well as by Harvard law professor Elizabeth Warren, whose name has been invoked numerous times in this debate, who served as a reporter for the National Bankruptcy Review Commission, as well as Professor Jay L. Westbrook of the University of Texas Law School.

I know that Professor LoPucki has been in contact with the office of virtually every Member of this body, including, it is reported to me, personal contact with 71 Senators. The professor has documented instances of forum shopping by corporate debtors that have harmed consumers and workers in virtually all of our States.

I had personal experience with this abuse during my service as attorney general of the State of Texas. I argued that the Enron Federal bankruptcy litigation should occur in Houston, TX. That seemed to me to be a commonsense argument, of course, because Houston, after all, is where the majority of employees, the majority of pensioners, the majority of creditors and every other stakeholder involved in that bankruptcy was located. Of course, many of these people were victimized by this corporate scandal that occurred, unfortunately, in my State.

Yet that is not where the case ended up, not in Houston, TX, but, rather, in

New York. Enron was able to exploit a key loophole in bankruptcy law to maneuver their proceedings as far away from Houston, TX, as possible. They ended up in their desired forum, and that is, as I mentioned, New York. Enron used the place of incorporation of one of its small subsidiaries in order to file their bankruptcy in New York and then used that smaller claim as a basis for shifting all of its much larger bankruptcy proceedings into that same court.

Let me make it clear. This company had 7,500 employees in Houston, but they filed for bankruptcy in New York where it had only 57 employees. This blatant kind of forum shopping, judge shopping, makes a mockery of all of our laws. The commonsense amendment which I have filed will combat such egregious forum shopping by requiring that corporate debtors file where their principal place of business is located or where their principal assets are located, rather than their State of incorporation, and forbidding parent companies from manipulating the venue by first filing through a subsidiary.

Bankruptcy venue abuse is not just bad for our legal system, it hurts America's consumers, creditors, workers, pensioners, shareholders, and small businesses alike. Under the current law, corporate debtors effectively go to the court that they themselves pick. Debtors can forum shop and pick jurisdictions that they think are more likely to rule in their favor. If debtors, in fact, get to pick the jurisdiction, then bankruptcy judges, unfortunately, according to Professor LoPucki and others, have a disturbing incentive to compete with other bankruptcy courts for major bankruptcy litigation by tilting their rulings in favor of corporate debtors and their lawyers. As a result, creditors can also be forced to litigate far away from the real world, their real world location, where costs and inconvenience associated with travel are prohibitive—in fact, leading too many of them to simply give up rather than to expensively litigate their claims in a far-off forum.

This troubling loophole serves to unfairly enable corporate debtors to evade their financial commitments; it badly disables consumers, creditors, workers, pensioners, shareholders, and small businesses from pursuing and receiving reasonable compensation from bankruptcy proceedings.

There are numerous examples. Let me mention three of the more prominent ones.

In 2001, in October, Boston-based Polaroid filed for bankruptcy in Delaware, listing assets of $1.9 billion. Polaroid's top executives claimed that the company was a ''melting ice cube'' and arranged a hasty sale for $465 million to a single debtor. This same court refused to hear testimony as to the true value of the company and closed the sale in only 70 days. The top executives went to work for the new buyer and received millions of dollars in stock. Meanwhile, disabled employees had their health care coverage canceled. The so-called melting ice cube became profitable the day after the sale became final.

In January of 2002, K-Mart filed for bankruptcy in Chicago, a venue which had reportedly been active in soliciting large corporate debtors to file there. With a workforce of 225,000, K-Mart had more employees than any company that had ever filed for bankruptcy nationwide. The judge in that case let the failed executives take tens of millions of dollars in bonuses, perks, and loan forgiveness. Bankruptcy lawyers also profited, pocketing nearly $140 million in legal fees. But some 43,000 creditors received only about 10 cents on the dollar.

The third example I would like to mention is WorldCom, known for perpetrating one of the biggest accounting frauds in the history of our country, inflating its income by $9 billion. Although based in Mississippi, WorldCom followed Enron to New York bankruptcy court where its managers received the same sort of lenient treatment that I mentioned a moment ago. No trustee was appointed. Indeed, 5 months after the case was filed, the debtors in office when the fraud occurred still constituted a majority on the board. They, in fact, chose their own successors. A top WorldCom executive used money taken from the company to build an exempt Texas homestead, and WorldCom took no action. That executive then used the homestead to buy his way out of his problems with the SEC. Meanwhile, creditors, mostly bondholders, lost $20 billion.

This is not the first time Congress has addressed this important issue. The House Judiciary Subcommittee on Commercial and Administrative Law held a hearing on July 21, 2004, entitled ''Administration of Large Business Bankruptcy Reorganizations: Has Competition for Big Cases Corrupted the Bankruptcy System?'' Congressman SHERMAN of California has led efforts to champion bankruptcy venue reform in that body.

During the 107th Congress, my colleague from Illinois, Senator DURBIN, introduced S. 2798, the Employee Abuse Prevention Act of 2002, joined by the Senators from Massachusetts, the Senator from Vermont, and the Senator from West Virginia, which also would have reformed bankruptcy venue law. Congressman DELAHUNT of Massachusetts introduced the same legislation in the House.

I believe we need to take the next logical step to respond to this important problem. The American people deserve better from our legal system when it comes to corporate bankruptcies. All bankruptcy cases deserve to be handled fairly and justly, and no corporate debtor should be allowed to escape responsibility by fleeing to a far-flung venue. It is high time we make this important and needed reform.

As I have indicated earlier, I have filed this amendment, but I have not called it up but certainly reserve the right to do so during the course of these proceedings. I have listened closely to the Senator from Utah and others, the Senator from Iowa, the chief sponsor of this legislation, who say that amendments to this bill would endanger its ultimate passage. While I certainly am sympathetic to what they have to say, I still believe these amendments ought to be decided on their merits, not based on perhaps concerns that are expressed about amendments jeopardizing a bill. In fact, I would think, indeed, in every instance the chief sponsor of the bill would ask Senators to refrain from filing any amendments, believing that their bill without amendments would have a better chance of ultimate passage. But that is not how our legislative process works.

I have, nevertheless, decided to refrain from calling up this amendment at this time. As I said, I reserve the right to do so later. I also reserve the right to ask for the yeas and nays and a vote on this amendment. But I have refrained from calling it up out of respect for the managers of this legislation, out of respect for Chairman GRASSLEY, the chief sponsor, and out of respect for the American people, who deserve to have better than they have under the status quo and who deserve to see this bill pass.

I hope I have made clear that judge shopping when it comes to bankruptcy litigation is a cancer that needs to be cut out, corrected, and cured.

I do hope my colleagues in this body will listen, will study this particular piece of legislation, and will lend their support.

I yield the floor.

EXHIBIT 1

MARCH 2, 2005.

RE: S. 314, the Fairness in Bankruptcy Litigation Act of 2005.

Hon. JOHN CORNYN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR CORNYN: We understand that the United States Senate is about to debate S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. We write to express our hope that, in doing so, the Senate will also take action on S. 314, the Fairness in Bankruptcy Litigation Act of 2005, which we support and which you introduced on February 8, 2005. After all, consistent with the title of S. 256, your legislation to reform the bankruptcy venue laws would indeed help prevent some of the worst abuses we have witnessed in bankruptcy litigation, and provide much needed protection to consumers as well as to the innumerable other parties—large and small alike—that are harmed by opportunistic forum shopping by corporate debtors: creditors, workers, pensioners, retirees, shareholders, and small businesses.

As state attorneys general, we are charged with a solemn duty to enforce the law, to protect consumers, and to combat corporate wrongdoing. It is bad enough that corporate scandals have victimized countless American

citizens in recent years. What's worse, many corporations have abused the bankruptcy venue laws and engaged in unseemly forum shopping in order to avoid their financial responsibilities. All too often, corporate debtors have fled their home states to pursue relief in far away jurisdictions—and in search of judges more friendly to the corporations' interests than to the interests of those the corporations have left behind. As you noted in your remarks upon introducing the legislation, literally thousands and thousands of workers, shareholders, retirees, small businesses and countless other Americans are regularly thwarted from protecting their interests and left financially stranded as a result.

Your legislation has already received an impressive and broad range of support, and the undersigned—a bipartisan group of state attorneys general from across the country united in a commitment to protect consumers and curb abusive corporate judge-shopping—is pleased to add its strong support. Not only does S. 314 finally implement a major recommendation from the October 1997 National Bankruptcy Review Commission report, it is supported by innumerable bankruptcy law professors and practitioners nationwide; the National Federation of Independent Business; counsel for the Enron Employees Committee; Brady C. Williamson, who served as chairman of the National Bankruptcy Review Commission; and major national bankruptcy organizations like the National Association of Credit Management, the Commercial Law League of America, and the National Bankruptcy Conference.

We commend your efforts to strengthen our bankruptcy system and protect consumers, creditors, workers, pensioners, shareholders, retirees, and small businesses against unsavory forum shopping by corporate debtors. Passage of S. 314 will end this gamesmanship, help restore credibility to our nation's bankruptcy laws, and safeguard the interests of Americans from all walks of life.

We urge the United States Senate to pursue every means necessary to enact the provisions of your bill into law.

Sincerely,

Scott Nordstrand, Acting Attorney General of Alaska.

Mike Beebe, Attorney General of Arkansas.

Bill Lockyer, Attorney General of California.

John Suthers, Attorney General of Colorado.

Mark Bennett, Attorney General of Hawaii.

Lisa Madigan, Attorney General of Illinois.

Stephen Carter, Attorney General of Indiana.

Charles Foti, Jr., Attorney General of Louisiana.

J. Joseph Curran, Jr., Attorney General of Maryland.

Tom Reilly, Attorney General of Massachusetts.

Mike Cox, Attorney General of Michigan.

Mike Hatch, Attorney General of Minnesota.

Jay Nixon, Attorney General of Missouri.

Patricia Madrid, Attorney General of New Mexico.

Brian Sandoval, Attorney General of Nevada.

Wayne Stenehjem, Attorney General of North Dakota.

Hardy Myers, Attorney General of Oregon.

Roberto Sanchez-Ramos, Secretary of Justice of Puerto Rico.

Patrick Lynch, Attorney General of Rhode Island.

Lawrence Long, Attorney General of South Dakota.

Paul Summers, Attorney General of Tennessee.

Greg Abbott, Attorney General of Texas.

Mark Shurtleff, Attorney General of Utah.

Alva Swan, Attorney General of the Virgin Islands .

Rob McKenna, Attorney General of Washington.

Darrell McGraw, Attorney General of West Virginia.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Thank you, Mr. President.

I have come to the floor today to briefly address the pending legislation. This issue forces us to face a fundamental question about who we are as a country, how we progress as a society, where our values lie as a people, how do we treat our fellow Americans who have fallen on hard times, and what is our responsibility to cushion those falls when they occur. We do so not only out of compassion for others but also knowing that hard times might at any moment fall on ourselves.

The proponents of this bill claim it is designed to curb the worst abuses of our bankruptcy system. I think that is a worthy goal shared by all those in this Chamber, and we can all agree that bankruptcy was never meant to serve as a ''get out of jail free'' card for use when you foolishly gamble away all your savings and don't feel like taking responsibility for your actions.

But to accomplish that, this bill would take us from a system where judges weed out the abusers from the honest to a system where all the honest are presumed to be abusers, where declaring chapter 7 bankruptcy is made prohibitively expensive for people who have already suffered financial devastation.

With this bill, it doesn't matter if you run up your debt on a trip to Vegas or a trip to the emergency room; you are still treated the same under the law. You still face the possibility that you will never get a chance to start over.

It would be one thing if most people were abusing the system and falling into bankruptcy because they were irresponsible with their finances. I think we need more responsibility with our finances in our society as well as from our Government. But we know that for the most part bankruptcies are caused as a result of bad luck.

We know from a recent study, which was mentioned by the distinguished Senator from Massachusetts, that nearly half of all bankruptcies occur because of an illness that ends up sticking families with medical bills they can't keep up with.

Let me give you as a particular example the case of Suzanne Gibbons, a constituent of mine. A few years back, Suzanne had a good job as a nurse, and a home on Chicago's northwest side. Then she suffered a stroke that left her hospitalized for 5 days. Even though she had health insurance through her job, it only covered $4,000 of the $53,000 in hospital bills. As a consequence of that illness, she was soon forced to leave her full-time nursing job and take a temporary job that paid less and didn't offer health insurance. Then the collection agencies started coming after her for her hospital bills that she couldn't keep up with. She lost her retirement savings, she lost her house, and eventually she was forced to declare bankruptcy. If this bill passes as written without amendment, Suzanne will be treated by the law the same as any scam artist who cheats the system. The decision about whether she can file for chapter 7 bankruptcy would not account for the fact that she fell into financial despair because of her illness.

With all that debt, she would have to hire a lawyer and pay hundreds of dollars more in increased paperwork. After all that, she still might be told she is ineligible for chapter 7 bankruptcy.

As much as we like to believe that the face of this bankruptcy crisis is credit card addicts who spend their way into debt, the truth is it is the face of people such as Suzanne Gibbons. It is the face of middle-class Americans.

Over the last 30 years, bankruptcies have gone up 400 percent. We have had 2,100 more in Illinois this year. We also know what else has gone up: the cost of childcare, the cost of college, the cost of home ownership, and the cost of health care which is now at record highs. People are working harder and longer for less, and they are falling farther and farther behind.

We are not talking about only the poor or even the working poor here. These are middle-class families with two parents who both work at good-paying jobs that put a roof over their heads. They are saving every extra penny they have so their children can go to college and do better than they did. But with just one illness, one emergency, one divorce, these dreams are wiped away.

This bill does a great job helping the credit card industry recover profits they are losing, but what are we doing to help middle-class families to recover the dreams they are losing?

The bankruptcy crisis this bill should address is not only the one facing credit card companies that are currently enjoying record profits. We have to look after those hard-working families who are dealing with record hardships. As Senator DODD, Senator FEINSTEIN, and others have pointed out, this bill also fails to deal with the aggressive marketing practices and hidden fees credit card companies have used to raise their profits and our debt. Charging a penalty to consumers who make a late payment on a completely unrelated credit card is but one example of these tactics. We need to end these practices so that we are making life easier not only for the credit card companies but for honest, hard-working, middle-class families.

If we are going to crack down on bankruptcy abuse, which we should, we should also make it clear we intend to

hold the wealthy and the powerful accountable as well.

One example: In my own State, we had a mining company by the name of Horizon that recently declared bankruptcy and then refused to pay its employees the health benefits it owed them. A Federal bankruptcy judge upheld the right of Horizon to vacate the obligations it had made to its workers. The mine workers involved had provided a total of 100,000 years of service and dedication and sacrifice to this company. They had spent their entire lives working hard. They had deferred part of their salaries because there was an assurance that health care would be available for them. These are men and women with black lung disease, with bad backs, with bad necks, and the company made a decision to go back on their promise, saying we will not pay the debt we owe these workers. And a Federal bankruptcy judge said that is OK, you are permitted to do that.

These same workers now are going to have a tough time as a consequence of this bill filing for bankruptcy. The irony should not be lost on this Chamber. It is wrong that a bill would make it harder for those unemployed workers to declare bankruptcy while doing nothing to prevent the bankrupt company that puts them in financial hardship in the first place from shirking its responsibilities entirely.

Mr. KENNEDY. Mr. President, will the Senator yield on that point?

Mr. OBAMA. I yield.

Mr. KENNEDY. As I understand it, these workers had health insurance that would have protected them as a result of illness and sickness. They had it probably for themselves and their families. What the Senator is saying is obviously in most of these circumstances when they had health insurance, they sacrificed wage increases and other kinds of benefits in order to get that health insurance. As I listened to the Senator, I heard that many of these workers have worked for lifetimes for this company. Now, as a result of the company going into bankruptcy, these workers effectively lost their health care coverage. I imagine a number of them may have some illness, perhaps some health care needs, probably an older population, and the cost to them to replace that kind of family coverage would be rather dramatic.

Mr. OBAMA. It would be prohibitive.

Mr. KENNEDY. Particularly if they are out of work.

What we are talking about here is, if they run into illness and sickness under the existing bankruptcy laws, they have a chance to be able to measure their assets and their creditors to be able to at least go on to another day. They may pay a fearsome price in terms of their own lives, but under the circumstances of the bill as proposed, they would be treated even more harshly.

As I listened to the Senator, he was talking about a rough sense of equity in terms of legislation that we ought to be considering here in the Senate.

Mr. OBAMA. That is an accurate assessment by the distinguished Senator from Massachusetts. I appreciate that amplification.

The central point is, what kind of message does it send when we tell hard-working, middle-class Americans, you have to be more responsible with your finances than the companies you work for? They are allowed to be irresponsible with their finances and we give them a pass when they have bad management decisions, but you do not have a pass when confronting difficulties outside of your control.

We need to reform our Bankruptcy Code so corporations keep their promises and meet their obligations to their workers. I remain hopeful our companies want to do the right thing for workers. Doing so should not be a choice, it should be a mandate.

Senator ROCKEFELLER and I have proposed two amendments to ensure this. I strongly urge my colleagues' support. One will increase the required payments of wages and employee benefit plans to $15,000 per individual from the current level of $4,925. It requires companies that emerge from bankruptcy to immediately pay each retiree who lost health benefits an amount of cash equal to what a retiree would be expected to have to pay for COBRA coverage for 18 months.

The second amendment prevents bankruptcy courts from dismissing companies' Coal Act obligations to pay their workers the benefits they were promised. These companies made a deal to their mine workers. They should be forced to honor that deal. That will be an amendment that hopefully will be added to the pending bill.

This bill gives a rare chance to ask ourselves who we are here to protect, for whom we are here to stand up, for whom we are here to speak. We have to curb bankruptcy abuse and demand a measure of personal responsibility from all people. We all want that. We also want to make sure we are helping middle-class families who are loving their children and doing anything they can to give them the best possible life ahead.

To wrap up, in the 10 minutes I have been speaking, about 30 of those middle class families have had to file for bankruptcy. We live in a rapidly changing world, with an economy that is moving just as fast. We cannot always control this. We cannot promise the changes will always leave everyone better off. But we can do better than 1 bankruptcy every 19 seconds. We can do better than forcing people to choose between the cost of health care and the cost of college. We can do better than big corporations using bankruptcy laws to deny health care and benefits to their employees. And we can give people the basic tools and protections they need to believe that in America your circumstances are no limit to the success you can achieve and the dreams you may fulfill.

While, unfortunately, I cannot support this bill the way it is currently written, I do look forward to working with my colleagues in amending this bill so we can still keep the promise alive.

Mr. KENNEDY. Will the Senator yield for one more question?

Mr. OBAMA. I yield.

Mr. KENNEDY. As I listened carefully to the excellent presentation of the Senator from Illinois on this legislation, this legislation has been presented as though it is for going after spendthrifts, individuals who abuse the credit system, who go out and live life high on the hog, go to the malls, buy the expensive clothes and charge it up. These individuals should not be let off scot-free. I gather from remarks of the Senator from Illinois he agrees with me, that we want accountability for those individuals.

Legislation that ought to be targeted toward those individuals and corrected with a hammer is addressed with a cannon, picking on the working families in its path who face bankrupcy through no fault of their own, as a result of the explosion of health care costs, the explosion of housing costs, explosion of tuition cost, the outsourcing of jobs, the increase in part-time jobs, and the issue of a growing older population which has a greater proclivity toward serious illness and disease such as cancer and stroke, and increasing numbers of individuals who are virtually cast adrift by major companies such as Enron, WorldCom, and Polaroid, and the company from Illinois the Senator has mentioned. The sweep of this legislation is going to be unduly harsh on a lot of hard-working, middle-income families playing by the rules, struggling for their families. They will be treated unjustly.

Mr. OBAMA. That is an accurate statement by the distinguished Senator from Massachusetts. He characterizes it correctly.

I add that all the statistics I have seen indicate one of the fastest growing segments engaged in bankruptcy is senior citizens who I don't think are any different than they were back in the day when we think people were more responsible and more thrifty. I think they are still thrifty and responsible. What has happened is they are experiencing extremely tough times partly because they are having difficulty paying for prescription medicines that are not covered under Medicaid.

Mr. KENNEDY. If the Senator will yield further, the Senator mentions the number of bankruptcies for our senior citizens has tripled in the last 10 years. The average income for those over 65 is $24,000. These are not great populations of free-spending people ringing up large expenses at the mall.

Shouldn't we take a look at the impact of the legislation before the Senate and the impact it will have on our population?

I commend the Senator for bringing this very important fact to the attention of the Senate. We have three times the number of bankruptcies now for our senior citizens. These are not the spendthrifts. Are those the people we are trying to catch with punitive measures in this bankruptcy legislation? I don't think so.

The Senator made a strong point. I thank him.

Mr. DURBIN. Mr. President, I commend my colleague from Illinois because he pointed to several issues in our State which dramatized the problem with this bankruptcy bill. This Horizon Mining Company in southern Illinois when it goes out of business not only shortchanges shareholders but leaves retirees in the lurch. We have reports of individuals who worked a lifetime for this mining company, paid in as they were supposed to, expecting to receive health care benefits after they retired, and then the company files bankruptcy and men and women with serious health issues—black lung and emphysema—find themselves without health care protection before they are eligible for Medicare. These are the people falling into the bankruptcy courts.

Our friends on the other side of the aisle say we need to change bankruptcy law because of moral failures in America, immoral conduct by people walking into the bankruptcy court when they should just pay their bills.

We go to the people who are supposed to monitor abuse in bankruptcy courts and they say of all the bankruptcies filed, only 3 percent—3 out of 100—may fall in that category. The credit card companies say it may be as high as 10 percent—1 out of 10—who should not be filing for bankruptcy. But, still, we are going to change the law for everyone walking into the court.

We find in reality—the Senator from Massachusetts has made this point—we are not talking so much about moral failures leading to bankruptcy, we are talking about economic failures leading to bankruptcy.

Professor Warren from Harvard Law School went out and actually asked the people filing bankruptcy, Why are you here today? What forced you into bankruptcy? Almost half of the people said medical bills. Three-quarters of those filed bankruptcy because the cost of their treatment was more than they could pay; three-fourths of them had health insurance when they were diagnosed, but it was not enough, or they lost their job, or the copays overwhelmed them.

If you are following this debate and you say, isn't it a shame these people did not plan for their future—the man who worked in the mine for 35 years planned for his future. He worked every day and he contributed every day to a pension, believing he would have health care. Guess what. Bankruptcy comes along, and he has no health care.

Take a look at the people walking into bankruptcy court. Did they plan for their future? They had health insurance. But it was not good health insurance. It had limits on it, and a catastrophic illness wiped them out. Is there one of us who believes we are somehow sheltered from this? Well, come to think of it, there may be. It could be Members of Congress believe they are sheltered from this. Do you know why? We have a pretty generous health insurance plan, as most Federal employees do. And when we retire, we are protected by that health insurance plan.

What is the likelihood a Member of Congress or retired Member of Congress will end up in bankruptcy court because of medical bills? Slim to none. So we live in this bubble, those of us in Congress, this bubble of protection, and think the whole world has the benefits we have. They do not.

Senator KENNEDY has been arguing for years to take the same health care Members of Congress receive and offer it to America. Whoa, what a radical idea, another Kennedy extremist position, to take the same health care of Congressmen and offer it to America. If we did that, we would not be talking about medical bankruptcy in the numbers we are facing today. But there are these bankruptcies by people who planned, by people who had health insurance, by people who paid a lifetime into the system believing they protected their family. They are that vulnerable.

Along comes the credit card industry that says: We want to change the bankruptcy law so if you get crushed by medical bills, you cannot get out from under. You keep paying and paying and paying for a lifetime. One of Senator KENNEDY's amendments says, losing your home because of a medical crisis in your family in bankruptcy is a tragedy we should avoid. He is right. Think about it.

I can give you examples. Let me give you one. I say to Senator KENNEDY, I think this illustrates the point you are making. Senator KENNEDY is trying to protect at least $150,000 worth of home for someone who goes into bankruptcy because of a medical crisis. Let me tell you about some people in Illinois.

Joyce Owens raised a son and a foster son and took care of her husband. She worked full time as a paralegal. Everything was fine with her family. She lived in Chatham, IL, 20 miles from my hometown. Then, in April 1997, her two sons Chris and Darrell were hit by a drunk driver. Darrell was killed. Chris, 27 years old, had a severed spinal cord and was rendered a quadriplegic.

Joyce was doing paralegal work at home because she wanted to stay there with her son Chris. He was in a wheelchair and needed help all the time. Slowly, working and caring for her son every day got to be too much and she was laid off.

Then, in 2000, 3 years after the accident, her husband died of a heart attack. He had always told her: Don't worry, I have life insurance. He did not. There was no life insurance. She was left to pay $200,000 in medical bills incurred by her quadriplegic son and the death of her husband.

How about that? Is that a moral failure? What did she do wrong morally? She worked her life to help her family, and when her son was in his worst condition, she did everything she could to help. And then she lost her husband as a helping hand. A moral failure? She tried to declare bankruptcy. Do you know why she did not? She would have lost her home—the home that was set up for her quadriplegic son.

So there she faces the dilemma. There is a lien on her home for the medical bills. She will not give it up because she cannot think of another place where her son can be taken care of. So what does it mean? A lifetime of $200,000 in debt for a woman who is doing her level best to take care of her family. She is one of the victims of this bill.

Under this bill, if she went to bankruptcy court, she would lose her home. She would not have enough equity in it to keep it. What is she going to do with that boy? He is now over 30 years old. She has dedicated the rest of her life to him.

Senator KENNEDY says, if you face that tragedy in your family, we are going to protect your home. When it is all said and done, you get $150,000 worth of home after your medical bills are wiped out. Is this such an outrage to say to the credit card companies, to say to the financial companies: You ought to be a little bit concerned about Joyce Owens of Chatham, IL?

This is a good woman, a good mother, a good wife, from a good family, struggling every day, who is going to be hammered by this bill. She is no moral failure. She, in my view, is a moral standard for all of us to live up to. And this bill is going to penalize her because some Members of Congress think the credit card industry deserves more profit at her expense.

Mr. KENNEDY. Will the Senator yield for a question?

Mr. DURBIN. I am happy to.

Mr. KENNEDY. Because this is a dramatic family circumstance—I think any of us who have listened have found this is too often not the exception but too often is the rule. But aren't there other provisions in this legislation to preserve those homes that are not just the homes of someone who has sacrificed, as she has, to try to preserve the home for her son, but that this legislation, as it exists now, has protections for homes that are worth many, many, many, many, many more times that will escape any kind of threat from bankruptcy because of the homestead exemption? And could the Senator explain to me how we can possibly pass a piece of legislation that is so unfair to some families and gives such extraordinary benefits to others? Where is, possibly, the equity and the fairness?

As a member of the Judiciary Committee, does the Senator not wonder

why in the world those who have been the principal sponsors of this legislation have not tried to address that during all the time we have been considering it, whether it was when we considered it 4 years ago or when we considered it in the committee markup? There was absolutely no attempt to do that. There was a strong effort by our friend and colleague Senator KOHL, who did an outstanding job with our last legislation that was before us. I am very hopeful he will offer a similar amendment this time.

But how could we possibly allow a system that is going to take that home from that family the Senator has outlined, and at the same time permit half a dozen different States to be able to have individuals shelter hundreds of thousands of dollars worth of real estate?

Mr. DURBIN. I thank the Senator from Massachusetts. I think people living in Illinois are some of the luckiest people in the world. I think it is a wonderful State. I am proud to represent it. But for Joyce Owens' situation, if she faced the same tragedy with her family and they lived in Florida, Texas, or Kansas, she could keep her home. You may say, why? Well, because the States have different standards—all the States.

What Senator KENNEDY says is, this is national legislation, and we should have a national standard to protect families' homes when they face a medical crisis.

In my State, you cannot protect much, if any, of a home. That is why Joyce Owens will be paying off these bills and facing debt collectors and harassment the rest of her natural life. She has no way out.

The Senator is exactly right; if you happen to live in one of these three States, you hit the jackpot. Do you know what some of the real sharp people do in bankruptcy? Bowie Kuhn—do you remember that name?—former Commissioner of Baseball. A prosperous man, right? Well, he got pretty deeply in debt one day, so he decided to take all of his assets and buy a mansion in Florida and file for bankruptcy. He filed for bankruptcy and got out from under his debts, but they let him keep his multimillion-dollar mansion in Florida. Bowie Kuhn got to keep his mansion. Joyce Owens cannot even keep her home to try to care for her quadriplegic son.

And you say to yourself, my friends on the other side of the aisle, surely in your home States you have people like this. You must be able to find them if you get outside this bubble we live in here and speak to people in the real world. Senator KENNEDY is speaking to people in the real world, and this is what he is hearing. This is what I hear, and what Senator OBAMA and others hear. That is why his amendment is so important.

Yesterday, we lost an amendment that said if you were serving in the Guard or Reserve, activated to duty in Iraq, and you go over there to serve your country and risk your life for America, and you lose your business and go into bankruptcy because you are overseas serving America—I offered an amendment to say, at least give those soldiers a chance in bankruptcy to protect their homes.

Do you know what happened to that amendment? We lost it, 58 to 38. Many of the 58 Senators who voted against that amendment for the Guard and Reserve are the first ones waving the flag in the Fourth of July parade: How much we love our soldiers.

Where were they yesterday? These great lovers of the American military were nowhere to be found when they had a chance to do something for them when they serve their country and face bankruptcy at home.

Here is a chance for some of our colleagues who talk long and hard about feeling the pain of ordinary families to do something. The Kennedy amendment offers them a chance to do something, to say that in the bankruptcy court, we will acknowledge the disasters that families face across America because of medical bills, and we will do something about it.

I salute the Senator for his leadership, and I look forward to passing the amendment.

Mr. KENNEDY. I see my colleagues, and I want to hear from them. But I welcome the fact that the Senator has brought up the issue of the National Guard and Reserve. There are some in this body who think that with the acceptance of the Sessions amendment we have protected the Guard and Reserves. That is absolutely wrong. The Sessions amendment only refers to the expenditures of health care after the individual has already been submitted to the means test, and it only applies to future expenditures of health care by the Guard or the Reserve. It is my understanding that the trustee already has that flexibility and that authority. I welcome the opportunity to submit with the Senator from Illinois a legal technical analysis of that amendment that will reflect clearly the fact that those guardsmen and reservists who are activated—and I believe the figure is up to 20,000; I know we used the figure 16,000 yesterday, but I believe the figure is closer to 20,000—do not have the protections that the Senator from Illinois wanted to provide for them.

We have to be serious about this. Hopefully, we will not be caught up in cliches and slogans. The Senator from Illinois had an amendment that would have had a direct impact on protecting the Guard and Reserve. The Sessions amendment does not do that because the Sessions amendment only applies to provisions that would apply to future health outlays. Those expenditures could already be considered by the trustee in bankruptcy.

I don't see how those who voted for the Sessions amendment and against the Durbin amendment could believe they have met the responsibilities to our National Guard and Reserves. I appreciate, again, the Senator reminding us about the importance of protecting our troops. We are down in terms of recruitment on the Guard and Reserve to critical numbers. We are not meeting our amount for Reserves and the National Guard at the present time. If we pass this legislation in this form it will be a powerful message to those guardsmen and reservists who are self-employed, out there trying to serve our country under difficult and trying circumstances, and who are in many instances the sole proprietor of a small business, that they get into the Guard and the Reserve at their risk because this legislation will put them at greater risk.

Mr. DURBIN. I thank the Senator from Massachusetts.

We let down the Guard and Reserve yesterday. Military families and groups supported my amendment, but 58 Senators voted against it. They decided that the men and women serving in the military, risking their lives, were not entitled to any breaks when it came to filing bankruptcy because as they were overseas their families and businesses failed. That was the decision yesterday. Fifty-eight Senators said, no, they are not entitled to any special help.

Today we have a chance to give a helping hand to people facing medical crises. Over half of the bankruptcies in America involve people who faced a medical crisis and were crushed by it. They turned to bankruptcy court. Senator KENNEDY gives them a chance in that court to come out with dignity and to start their lives anew. He gives them a chance to keep their homes. Is this unreasonable? I don't think it is. It is only fair. I gladly support the amendments of the Senator and thank him for offering them both.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, a recent study by Professor Elizabeth Warren and her associates at Harvard exposes the flawed rationale for this legislation. According to Professor Warren, about 2 million Americans experienced medical bankruptcy, with half of all bankruptcy filings citing medical causes as a major factor. Among those who cited illness as a cause of bankruptcy, their average reimbursed medical costs since the start of their illness was nearly $12,000, even though more than three-quarters had health insurance at the onset of their illness.

Professor Warren's study found that those who filed for medical bankruptcy did everything they could to keep from filing. In the 2 years before they actually declared bankruptcy, those who filed after suffering a serious illness or injury went through extensive sacrifices as they struggled to pay for their health care and make ends meet. One in five went without food. One-third had their electricity shut off. Half lost their phone service. One in

five were forced to move. And many more went without needed health care or couldn't fill a needed prescription. And 7 percent actually had to move an elderly relative to a less expensive home.

According to Professor Warren, families were bankrupted both directly by medical costs and indirectly from lost income when they were physically incapable of working. Diagnoses commonly named by those filing medical bankruptcy include heart disease, trauma or orthopedic problems, cancer, diabetes, pulmonary disease, childbirth related or congenital disorders, ongoing chronic illness, or mental disorders.

Interestingly, most medical bankruptcy filers had health coverage at the onset of their illness. More than three-quarters had coverage, and less than 3 percent voluntarily chose to go without insurance. The majority of those without insurance could not afford to maintain it, while almost 1 in 10 could not obtain coverage because of pre-existing health conditions.

A significant loss of income or years of piling up medical debt because of ongoing medical needs frequently makes bankruptcy unavoidable. The average out-of-pocket cost since the beginning of the filer's illness was significantly higher, averaging $11,854, although many had much higher costs. The average out-of-pocket costs for those with cancer was $35,000, while those families dealing with neurological disorders averaged more than $15,500.

The Harvard study looks at the reality of people who file bankruptcy and what forces them into bankruptcy, and it shows that 50 percent of those debtors had significant medical debt. The proponents of this bill want to ignore this reality because it doesn't fit in with their rhetoric about the bill.

My amendment focuses on those people for whom medical debts and lost income due to illness were the primary factors in their bankruptcies. Their medical debts would have to equal 25 percent or more of their annual income or they have to have lost one month's income due to their illness. This is what it means to be a medically distressed debtor under my amendment. Those families clearly deserve laws that will protect them. As currently written, this bill does not protect those who were forced into bankruptcy by a serious family illness.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 32

Mr. CORZINE. Mr. President, before I call up my amendment, let me compliment the Senator from Massachusetts for his continued argument on behalf of the men and women who work very hard for a living, are put into difficult circumstances because of medical care costs, and end up in a situation that is extraordinarily heavy handed and insensitive to the realities of what is going on with the cost of health care. I compliment him and the Senator from Illinois for looking after our men and women in uniform.

All of these are areas where the overall Bankruptcy Abuse Prevention and Consumer Protection Act is missing the point. So much of what is occurring in the personal bankruptcy area is a function of personal situations, things that are circumstances beyond the control of the individual. I will talk about another one, economically distressed caregivers, in my amendment.

It is impossible to think that we need to use a means test as the basis of how we are solving this problem, particularly when we are taking a completely unbalanced approach and not looking seriously at corporate bankruptcy. Now we read in the paper today, we have these protection trusts that are offshore, and we even learn they are onshore. It was published in the New York Times today about how the wealthy can protect their assets, not even using the homestead. They just set up a trust and it is automatic. They can avoid it. But someone who has grave medical difficulties, and in my amendment, the long-term care situation, there is a lack of fairness that people are just not addressing when we are talking about Bankruptcy Code changes that really are harsh on those people most vulnerable in our society.

I send an amendment to the desk.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendments? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. CORZINE] proposes an amendment numbered 32.

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

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

The amendment is as follows:

(Purpose: To preserve existing bankruptcy protections for individuals experiencing economic distress as caregivers to ill or disabled family members)

On page 19, strike line 13, and insert the following:

monthly income.

''(8) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is an economically distressed caregiver.''.

On page 113, between lines 19 and 20, insert the following:

(4) by inserting after paragraph (14A), as added by this Act, the following:

''(14B) 'economically distressed caregiver' means a caregiver who, in any consecutive 12-month period during the 3 years before the date of the filing of the petition—

''(A) experienced a reduction in employment for not less than 1 month to care for a family member, including a spouse, child, sibling, parent, grandparent, aunt, or uncle; or

''(B) who has incurred medical expenses on behalf of a family member, including a spouse, child, sibling, parent, grandparent, aunt, or uncle, that were not paid by any third party payer and were in excess of the lessor of—

''(i) 25 percent of the debtor's household income for such 12-month period; or

''(ii) $10,000.''; and

(5) by inserting after paragraph (44), the following:

''(44A) 'reduction in employment' means a downgrade in employment status that correlates to a reduction in wages, work hours, or results in unemployment.''.

Mr. CORZINE. Mr. President, economically distressed caregivers are those who have incurred substantial medical debt on behalf of dependent or nondependent family members. This is the easy thing, taking care of mom and dad. It is a normal value concept in America that people look after their seniors. Sometimes that comes at an enormous cost to those families' ability to maintain their employment status or reduced hours or wage levels. Many people have to go on the unemployment rolls.

There are an estimated 44 to 50 million family caregivers in our country, a large number. Nobody really knows the number. These Americans spend anywhere from a few hours a week to 40 hours a week or more taking care of a loved one, sick or disabled.

These individuals provide an enormous service to our society because the costs they take up are not borne by the broader society through Medicaid or other areas, and they provide an enormous benefit to their families. The economic estimate of this value is over $257 billion annually. According to the National Family Caregivers Association, in my home State, there are 830,000 or so family caregivers. So New Jersey has 830,000 of these people in a population of about 8.5 million. Almost 10 percent of the population is involved with family caregiving. The estimated value is just shy of $8 billion.

That unpaid care comes with a real cost. According to Harvard Law School Professor Elizabeth Warren, whom I know Senator KENNEDY has quoted a number of times in the presentation, approximately 125,000 American families in this long-term care situation, family caregiving situation, go and declare bankruptcy each year because of their inability to work. It is really a Hobson's choice about whether they take care of their families or go to work. It puts them in an incredible position of choosing what they think is right for their family or whether they deal with the economic system, which now, according to the means test, will put them into chapter 13. It is an incredible thing that we are foisting on the American people.

I have one anecdote everybody should look to regarding the practical reality of these situations. A young lady from Blackwood, NJ, wrote to my office talking about this bill. She is 31 years old and the sole caregiver for her husband, who is 47 and has Lou Gehrig's disease. He is in a long-term care situation. He will be there for as long as he is able to sustain himself with this tragic disease. They have four young

daughters, 11, 7, 2, and 6 weeks old. She is the sole caregiver. She has $40,000 in medical bills, with untold numbers ahead of her. The financial strain for her and her children will put her into bankruptcy. Is this a lady who ought to go directly to chapter 13 because she doesn't meet the median income standard?

It is inconceivable in my mind that we are prepared to let those who are doing very well in life set up these protection trusts that we know about, which protect the wealthy who have fancy homes and homestead rebate situations, and the young woman in Blackwood cannot protect herself, her four daughters, and take care of her husband. This is outside of the realm of reason, and it doesn't make sense economically for the country because what is going to happen is this individual is going to be on charity care or Medicaid to take care of the medical bills of her husband, who has Lou Gehrig's Disease. They are going to turn somewhere, and we are going to pay for it. We have taken away the opportunity for that individual to take care of her family. And $257 billion worth of long-term caregiving is the estimate we have in this society. We are going to put that at risk through this bill. We ought to amend that. We ought to have standards set with regard to individuals who are giving care to their families and those they are responsible for and take care of these 125,000 folks who declare bankruptcy each year and make sure they are not forced into chapter 13. This is a mistake. It is essential that people recognize what we are doing here in a practical sense—undermining that safety net provided to families and individuals. I hope my colleagues will support my amendment and support Senator KENNEDY's because the broader question of medical care is a driving force in over 50 percent of all of the bankruptcies in this country.

It is hard to imagine that we are going to put folks into this indentured servitude, which is only going to lead to most of them using other social services in the country and will rack up even higher costs in Medicaid and charity care. The cost is going to come out, and the credit card companies are going to benefit. It doesn't seem to be a sensible economic practice.

Mr. KENNEDY. If the Senator will yield, those who have been proponents say: Look, we have these spendthrifts who use these credit cards and go to the malls and exceed their credit, and there has to be accountability and responsibility to make sure they are going to effectively be dealt with. So we have, allegedly, this legislation. It has been pointed out during the course of the debate that even the credit card companies say it is less than 10 percent of all filers that fall in to this spendthrift category. Most of the commissions that have studied bankruptcy over a period of time have actually put it at 4 or 5 percent. Nonetheless, we are passing this legislation that is going to have the impact that the Senator has mentioned in terms of those who are involved in long-term care or those who are elderly and have three times the bankruptcies today then they did in the past, with the average income for seniors being $25,000—large spendthrifts, seniors, large spendthrifts. But the tragedy is that they run into the health care challenges, cancer or stroke, and they run up these medical bills, and they will end up losing their homes and with their lives virtually being destroyed.

Does the Senator not agree that we ought to be able to fashion pretty easily legislation to deal with those who are involved in the excesses of spending in relationship to credit, and we ought to have accountability for those people? But that isn't what this bill is, is it? That isn't what this legislation is really all about, is it? Doesn't the Senator agree with me that we could fashion a bill to address the needs that are out there? But this bill isn't it. I would be interested in the Senator's view, as somebody who has had great experience and a background in understanding both credit and the financial world. I believe his views on this would be enormously valuable.

Mr. CORZINE. The Senator from Massachusetts asks the correct question. What is the problem we are addressing here? Is it a narrow problem of a few abusers of the credit system—and the estimates I see are 10 percent or less—and when we address that, are we encompassing far too many people who are situationally disadvantaged by how the bankruptcy system would work in future circumstances?

The Reserve and Guard folks who the Senator from Illinois talked about, the people who are dealing with an out-of-control cost structure in our medical system or long-term caregivers—44 million people who are looking after seniors and disabled in this country are getting not a whit paid for from that. We are going to impose a cost on them that we are going to end up paying back in the Medicaid system? It is just bad economics. It is not even smart public policy, saying, let's do an accounting estimate of what the cost is and the way it is today, where people are providing $257 billion worth of aid, and we are going to turn around and force that into a system. I don't know. Where I came from, we like to look at the costs and the benefits, and we try to identify the right side of the equation.

In my view, this bankruptcy bill is not taking into account these very important situational circumstances. It is going to raise enormously the cost of doing health care business in this country and the cost of recruitment in our military, and the only people who will benefit are the guys who have the smart lawyers who will teach them how to put protective trusts together and move to Florida or wherever the homestead protections are the highest. It is a disaster economically, as well as for individuals' lives.

I appreciate the question. We ought to try to work to amend this legislation so we are dealing with the 10 percent of the people who are trying to avoid paying their bills. Most people do not want to be in bankruptcy.

I ask unanimous consent that a Consumer Federation of America be printed in the RECORD.

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

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: The Consumer Federation of America applauds your efforts to prevent corporations in financial trouble from fleeing their home states to declare bankruptcy in courts far from their workers, retirees, shareholders and small business vendors. We strongly support S. 314, the Fairness in Bankruptcy Litigation Act of 2005, which would require corporations to declare bankruptcy in the states in which they are headquartered or have their principal assets, as opposed to their state of incorporation. It would also forbid parent companies from filing first through a subsidiary corporation in an effort to manipulate the bankruptcy venue.

The raft of corporate scandals in the last few years has exposed many flaws in a system of market oversight that used to be the envy of the world. Many investors lost faith in our markets, tens of thousands of employees lost their jobs and retirees have lost significant portions of their pension plans. Corporate officers systematically looted their companies and lined their pockets, even as their companies' financial position began to deteriorate.

To add insult to injury, firms like Enron and Worldcom filed for bankruptcy in New York, far from their headquarters in Texas and Mississippi. Other infamous bankruptcies involving the Boston-based Polaroid Corporation and Texas-based Continental Airlines ended up in Delaware courts. By filing for bankruptcy thousands of miles from their principal place of business, these companies were gaming the system. They chose bankruptcy courts well-known for their leniency with debtor corporations. These firms were also shutting out employees, retirees, small business vendors and some creditors from meaningfully participating in the bankruptcy proceeding, making it far more likely that these individuals would end up financially stranded.

Thank you for your efforts to correct this corporate bankruptcy abuse. I strongly urge you to formally offer it as an amendment to bankruptcy legislation, S. 256.

Sincerely,

TRAVIS B. PLUNKETT,
Legislative Director,
Consumer Federation of America.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

AMENDMENT NO. 31

Mr. DAYTON. Mr. President, I call up amendment No. 31 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments will be set aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DAYTON] proposes an amendment numbered 31.

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

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

The amendment is as follows:

(Purpose: To limit the amount of interest that can be charged on any extension of credit to 30 percent)

At the appropriate place, insert the following:

SEC. ___. TERMS OF CONSUMER CREDIT.

(a) CAP ON INTEREST CHARGEABLE.—A creditor who extends credit to any consumer shall not impose a rate of interest in excess of an annual rate of 30 percent with respect to the credit extended.

(b) PREEMPTION OF STATE LAW.—The provisions governing rates of interest under subsection (a) shall preempt all State usury laws.

(c) EXEMPTION TO PREEMPTION.—If a State imposes a limit on the rate of interest chargeable to an extension of credit that is less than the limit imposed under subsection (a), that State law shall not be preempted and shall remain in full force and effect in that State.

Mr. DAYTON. Mr. President, I salute my colleague, Senator KENNEDY, for his powerful and heroic statements today on behalf of the people of America who do not have the time or the money to come to Washington or hire expensive lobbyists to press their causes in the Senate. He has championed their concerns for decades now.

I am very proud to have been a member of his caucus a short while ago, listening to him speak the truth about this legislation, which is a totally one-sided assault on real Americans, the folks we see out there in our States who cannot be here because they are working, because they have earned a decent living, a middle-income living, but they are not getting rich, and they are not taking advantage of programs, but they have suffered the kind of personal misfortunes Senator KENNEDY, Senator DURBIN, and others have described—serious injuries, illnesses to themselves, to their spouses, or to their children. But they do not have health coverage, or they actually find out now they have health coverage, but the gaps in that coverage are so large or the copayments are so high they run up debts they cannot afford.

We can talk about people who lost their jobs and often, therefore, their health coverage, which means they have added economic misfortune on to a health crisis. They are the targets of this legislation, the victims of this legislation. It is self-entitled the Bankruptcy Abuse Prevention and Consumer Protection Act. If this bill is a consumer protection act, believe me, the consumers of America are in very serious trouble. This is a Credit Card Company Protection Act. The poor credit card companies of America are the innocent victims, we are being told, if we believe what we are hearing from the other side, of some supposed massive consumer fraud when, in fact, in the 8 years since this legislation was first introduced, the number of credit card solicitations in this country has doubled to 5 billion a year. Between 1993 and 2000, the amount of credit extended to people in this country grew from $77 billion to almost $3 trillion.

During the 8 years of the existence of this legislation, the bankruptcy filings in America have increased by 17 percent, and the credit card company profits have increased by 163 percent, from $11.5 billion to over $30 billion in profits last year. Does that seem like an industry that is facing a financial crisis or is being taken advantage of by people who are trying to get out from under their responsibilities? Not at all. In fact, the opposite. In fact, the opposite is that the credit card companies are taking advantage of Americans, not the other way around.

Some courts around the country have demanded that the credit card companies disclose the amount that remains to be repaid from what was actually borrowed and how much are the fees, the penalties, and the interest rates they are charging. It turns out that with the interest rates conventionally charged and the terms and conditions that are written into these agreements, many of the credit card companies are actually billing two times or more than the amount that is actually borrowed or remains to be paid. Often now it is higher than that.

Here is a form of a loan operation in my home State of Minnesota called Money Centers. Their slogan is: ''We make it easy.'' They make it easy all right. Their annual interest charge is 384 percent. But that is a bargain compared to Check and Go in Wisconsin. Their annual interest charge is 535 percent. Both of them combined do not equal the interest rate that is charged by the County Bank of Rehoboth Beach, DE, whose annual interest rate is 1,095 percent of annual interest charged on the amount that is borrowed. Now that is real abuse. That goes way beyond what we call predatory lending. That is ''terroristic'' lending. Yet this bill before us does nothing about those lenders' abuses that drive far more people into bankruptcy than what we are hearing about from the other side today.

This legislation does nothing about hospitals and other health care providers who charge uninsured patients much more than they charge their insured patients, or those covered by programs such as Medicare and Medicaid, and then turn around and charge exorbitant interest rates on top of on bills of tens of thousands of dollars to the very people they are supposed to be helping who cannot possibly afford, with moderate incomes, to repay those kinds of costs.

That overcharge for the uninsured is why an overnight stay at a Virginia hospital costs $6,000 if someone is on Medicaid, but it costs $29,000 if it is Paul Shipman who had a heart attack and is uninsured. That is why a woman named Rose Schaffer, who is now being harassed by a hospital collection unit after she suffered a heart attack, said:

> The hospital saved my life, but now they are trying to kill me.

This bill also does nothing about the abuses of bankruptcy laws that allow large corporations to declare bankruptcy, dump their pensions and their retiree health benefits, and then emerge from bankruptcy and leave thousands of innocent victims. I met with some of them just this last week in my State of Minnesota. It is heartbreaking. It makes you want to cry, and then it makes you so angry at the injustice that has occurred to good, hard-working men and women who have worked all their lives, played by the rules, did everything they are supposed to do, did their part, helped build these companies, and now they are retired and the companies go into bankruptcy, such as mining companies. As one of the workers said: A company gets the mine, and we get the shaft. The company comes out of bankruptcy court proceedings and it is profitable again, having left behind its pension obligations and its health obligations to retirees—people who are betrayed, abandoned, and left destitute with no recourse whatsoever.

Those are the terrible and huge abuses of bankruptcy laws that are destroying lives in Minnesota and across this country and are leaving American taxpayers with billions of dollars of unfunded pension obligations that they are going to have to pay rather than the companies that incurred them. This legislation before us does nothing about addressing those abuses.

A spokesperson for the distinguished chairman of the Senate Finance Committee, the author of this legislation, Senator GRASSLEY, said on behalf of Senator GRASSLEY, when he recently reintroduced the legislation:

> People who have the ability to repay some or all of their debts should not be able to use bankruptcy as a financial planning tool so they get out of paying their debts scot-free while honest Americans who play by the rules have to foot the bill.

I do not think any of us would disagree with that; I certainly would not. Then I see these companies using bankruptcy law as a financial planning tool, as a corporate car wash where they can go through and clean their ledgers of these obligations to workers and retirees and come out, reestablish profitability, and these men and women, good Americans, are left behind with nothing.

Again, that is an injustice enough by itself, but the other result is the taxpayers pay the bill. This bill does nothing about that. So my amendment actually adds a real consumer protection clause to the bill that otherwise does not deserve the name. It would limit the maximum annual interest that could be charged by anyone, any lender, to 30 percent.

Now, that tells us how bad things are in this country, that a 30-percent interest charge would actually be a reduction. Right now inflation has been running less than 2 percent annually. The

current rate for a 3-month Treasury bill is 2.75 percent. The prime lending rate is 5½ percent. Thirty percent as a ceiling of what could be charged annually is still consumer abuse, but it is a lot better than 384 percent or 1,095 percent or 1,095 percent. So that is what this amendment would do. It would set a limit of the annual interest rate that could be charged by any lender to 30 percent.

If somebody believes it is not profitable for them to lend money, for whatever reasons, liability, likelihood of repayment, whatever else, that it is not profitable at a 30-percent annual interest, I say it is not a wise loan for the lender and it is not a wise loan for the borrower.

We have too many people in this country who are taking advantage of others and charging these astronomical, shameful, disgraceful, and they ought to be illegal, rates of interest and taking advantage of those people, driving them deeper into debt, many of those that my colleagues have cited as being the culprits in this situation, the nonhealth care borrowers who are running up these credit card debts.

If someone is paying 384-percent interest a year, they are going to run up that debt very fast. If someone is paying 1,095-percent interest on anything they have borrowed, believe me, anybody in this country is going to be needing to file for bankruptcy very fast. This bill does not even mention those abuses.

This amendment would put a real consumer protection clause into this bill and for that reason, as well as basic justice, we should do what this body is supposed to do, which is to stand up and protect Americans. I urge my colleagues to give it their support.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

AMENDMENT NO. 19

Mrs. FEINSTEIN. Mr. President, I call up amendment No. 19.

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

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. KYL, and Mr. BROWNBACK proposes an amendment numbered 19.

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

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

The amendment is as follows:

(Purpose: To enhance disclosures under an open end credit plan)

Beginning on page 473, strike line 14 and all that follows through page 482, line 24, and insert the following:

Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11) ENHANCED DISCLOSURE UNDER AN OPEN END CREDIT PLAN.—

''(A) IN GENERAL.—A credit card issuer shall provide, with each billing statement provided to a cardholder in a State, the following on the front of the first page of the billing statement in type no smaller than that required for any other required disclosure, but in no case in less than 8-point capitalized type:

''(i) A written statement in the following form: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance.'.

''(ii) Either of the following:

''(I) A written statement in the form of and containing the information described in item (aa) or (bb), as applicable, as follows:

''(aa) A written 3-line statement, as follows: 'A one thousand dollar ($1,000) balance will take 17 years and 3 months to pay off at a total cost of two thousand five hundred ninety dollars and thirty-five cents ($2,590.35). A two thousand five hundred dollar ($2,500) balance will take 30 years and 3 months to pay off at a total cost of seven thousand seven hundred thirty-three dollars and forty-nine cents ($7,733.49). A five thousand dollar ($ 5,000) balance will take 40 years and 2 months to pay off at a total cost of sixteen thousand three hundred five dollars and thirty-four cents ($16,305.34). This information is based on an annual percentage rate of 17 percent and a minimum payment of 2 percent or ten dollars ($10), whichever is greater.'. In the alternative, a credit card issuer may provide this information for the 3 specified amounts at the annual percentage rate and required minimum payment that are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by clause (i).

''(bb) Instead of the information required by item (aa), retail credit card issuers shall provide a written 3-line statement to read, as follows: 'A two hundred fifty dollar ($250) balance will take 2 years and 8 months to pay off a total cost of three hundred twenty-five dollars and twenty-four cents ($325.24). A five hundred dollar ($500) balance will take 4 years and 5 months to pay off at a total cost of seven hundred nine dollars and ninety cents ($709.90). A seven hundred fifty dollar ($750) balance will take 5 years and 5 months to pay off at a total cost of one thousand ninety-four dollars and forty-nine cents ($1,094.49). This information is based on an annual percentage rate of 21 percent and a minimum payment of 5 percent or ten dollars ($10), whichever is greater.'. In the alternative, a retail credit card issuer may provide this information for the 3 specified amounts at the annual percentage rate and required minimum payment that are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by clause (i). A retail credit card issuer is not required to provide this statement if the cardholder has a balance of less than five hundred dollars ($500).

''(II) A written statement providing individualized information indicating an estimate of the number of years and months and the approximate total cost to pay off the entire balance due on an open-end credit card account if the cardholder were to pay only the minimum amount due on the open-ended account based upon the terms of the credit agreement. For purposes of this subclause only, if the account is subject to a variable rate, the creditor may make disclosures based on the rate for the entire balance as of the date of the disclosure and indicate that the rate may vary. In addition, the cardholder shall be provided with referrals or, in the alternative, with the '800' telephone number of the National Foundation for Credit Counseling through which the cardholder can be referred, to credit counseling services in, or closest to, the cardholder's county of residence. The credit counseling service shall be in good standing with the National Foundation for Credit Counseling or accredited by the Council on Accreditation for Children and Family Services. The creditor is required to provide, or continue to provide, the information required by this clause only if the cardholder has not paid more than the minimum payment for 6 consecutive months, beginning after January 1, 2005.

''(iii)(I) A written statement in the following form: 'For an estimate of the time it would take to repay your balance, making only minimum payments, and the total amount of those payments, call this toll-free telephone number: (Insert toll-free telephone number).'. This statement shall be provided immediately following the statement required by clause (ii)(I). A credit card issuer is not required to provide this statement if the disclosure required by clause (ii)(II) has been provided.

''(II) The toll-free telephone number shall be available between the hours of 8 a.m. and 9 p.m., 7 days a week, and shall provide consumers with the opportunity to speak with a person, rather than a recording, from whom the information described in subclause (I) may be obtained.

''(III) The Federal Trade Commission shall establish not later than 1 month after the date of enactment of this paragraph a detailed table illustrating the approximate number of months that it would take and the approximate total cost to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other additional charges or fees are incurred on the account, such as additional extension of credit, voluntary credit insurance, late fees, or dishonored check fees by assuming all of the following:

''(aa) A significant number of different annual percentage rates.

''(bb) A significant number of different account balances, with the difference between sequential examples of balances being no greater than $100.

''(cc) A significant number of different minimum payment amounts.

''(dd) That only minimum monthly payments are made and no additional charges or fees are incurred on the account, such as additional extensions of credit, voluntary credit insurance, late fees, or dishonored check fees.

''(IV) A creditor that receives a request for information described in subclause (I) from a cardholder through the toll-free telephone number disclosed under subclause (I), or who is required to provide the information required by clause (ii)(II), may satisfy the creditor's obligation to disclose an estimate of the time it would take and the approximate total cost to repay the cardholder's balance by disclosing only the information set forth in the table described in subclause (III). Including the full chart along with a billing statement does not satisfy the obligation under this paragraph.

''(B) DEFINITIONS.—In this paragraph:

''(i) OPEN-END CREDIT CARD ACCOUNT.—The term 'open-end credit card account' means an account in which consumer credit is granted by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an unpaid balance, and the amount of credit that may be extended to the consumer during the term of the plan is generally made available to the extent that any outstanding

balance is repaid and up to any limit set by the creditor.

''(ii) RETAIL CREDIT CARD.—The term 'retail credit card' means a credit card that is issued by or on behalf of a retailer, or a private label credit card, that is limited to customers of a specific retailer.

''(C) EXEMPTIONS.—

''(i) MINIMUM PAYMENT OF NOT LESS THAN TEN PERCENT.—This paragraph shall not apply in any billing cycle in which the account agreement requires a minimum payment of not less than 10 percent of the outstanding balance.

''(ii) NO FINANCE CHANGES.—This paragraph shall not apply in any billing cycle in which finance charges are not imposed.''.

Mrs. FEINSTEIN. I ask unanimous consent to add Senator BROWNBACK's name to this amendment as a cosponsor.

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

Mrs. FEINSTEIN. Mr. President, this amendment is offered on behalf of the Senator from Arizona, Mr. KYL, and myself. Because Senator KYL has an urgent appointment, I will make a very brief statement and then turn it over to Senator KYL, and then I will wrap up. I ask unanimous consent to be able to do that.

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

Mrs. FEINSTEIN. Mr. President, today 144 million Americans have credit cards and they are charging more debt than they have in the past. Let me give one example of that. Credit card debt between 2001 and 2002 increased 8½ percent. Between 1997 and 2002, it increased 36 percent, and between 1992 and 2002, it increased by 173 percent. Forty to 50 percent of all credit card holders make only the minimum payment.

I am a supporter of the bankruptcy bill, but here is the rub: Individuals get six, seven, or eight different credit cards, pay only the minimum payment required, and then end up with debt rolling over their shoulders like a tsunami. That happens in case after case. So that is the predicate for this amendment. It is like Senator AKAKA's amendment, but it is less onerous than the amendment of Senator AKAKA. I will explain that, but first I defer to my cosponsor, the Senator from Arizona.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I thank the Senator from California for deferring because I do have only a moment. I join her in speaking in favor of this amendment and laying it before our colleagues. The point of the bankruptcy reforms is to try to help people get into a position to pay their obligations freely contracted and to try to make sure that creditors get as much of what they are owed as possible. Part of that is to try to help people not get into situations where they are not going to be able to pay their debts, and that is the basic philosophy of this amendment.

One can go too far and put conditions on companies such as credit card companies, for example, that are so onerous that they cannot possibly comply. People want to have ease of dealing with credit cards, but one can also get into a lot of trouble with credit card debt, as everybody acknowledges. It can get away from a person if they are not careful. What this amendment does is to borrow from a California statute that was declared invalid in California by a Federal court only because it was preempted by the Federal law, the Truth In Lending Law, which we are hereby amending, so that that same provision would apply again in California and to the other States as well.

It requires the companies that offer these cards, when they find someone is paying the minimum amount on a monthly basis, to let them know what will happen or what can happen if they continue to do that, which is essentially that a person is going to end up paying a lot of interest and they are going to end up with a huge debt at a certain point in time that they are not aware of. They need to be aware of it. So we are going to tell the person either hypothetically, if it is not possible to do it on an individual basis, or individually, what the consequences of their paying this minimum amount are, a way to try to help people understand what they are doing and thereby better arrange their affairs so they can pay their debts, and therefore the creditors get paid. That is a win/win for everybody.

We have tried to strike the right balance. I think the legislation that was offered by Senator AKAKA was simply seen as unworkable and that is why I opposed it. The concept is not bad; it is that the execution of it would not be possible. We think this strikes a better balance. If our colleagues can demonstrate that somehow or other this is impossible to do, we invite them to demonstrate that. We think it strikes the right balance and yet achieves both of the objectives of helping people keep their affairs straight and making sure all of the creditors get paid.

We will have more to say, but I do only have a moment. I thank Senator FEINSTEIN for her leadership on this issue, for bringing it to my attention and for helping to pursue it today.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the Senator from Arizona for his cosponsorship on this amendment and also for his friendship as well.

We have talked about credit card debt increasing. Let me talk a little bit about what it is today. It has increased from about $251 billion in 1990 to over $790 billion in the year 2000. That is an increase of 300 percent.

There has been a dramatic rise in personal bankruptcies during these same years. In 1990 there were 718,107 personal bankruptcies. In 2000 that number had almost doubled to 1,217,972 personal bankruptcy filings. In 2004 it went up again, to 1,563,145 personal bankruptcy filings. Many of these personal bankruptcies are from people who get a credit card. It looks alluring. They do not recognize what a 17-, 18-, 19-percent interest rate can do. They pay just the minimum payment. They pay it for 1 year, 2 years—they have something else, they get another card, they get another card, they get another card, they do the same thing.

They get 2 or 3 years down the pike and they find that the interest on the debt is such that they can never repay these cards, and they do not know what to do about it.

We say that the credit card companies have some responsibility. During the first 6 months of the minimum payment of the balance, the credit card companies, under this amendment, would just put forward what they negotiated to put forward in California. There are a couple of options, and it is just really incremental debt sizes. If you have $1,000 worth of debt, and you make the minimum payment, this is what happens. If you have $2,500 worth of debt or $5,000 worth of debt, this is what happens. So there is that scheme and that is in the underlying bill. Or another one, which is $250, $500, or $750 in debt.

After that, if the consumer makes only minimum payments for 6 consecutive months, then this is where the bill comes in. The credit card company is responsible for letting the individual know essentially how much interest they have, and disclose in each subsequent bill the length of time and total cost which is required to pay the debt plus interest.

People have to know this. If they are a minimum-payment person, they have to know what it means to make those minimum payments over a substantial period of time.

The amendment would also require that credit card companies be responsible to put out a 800 number, included on the monthly statement, where consumers can call to get an estimate of the time it would take to repay their balance, if only making minimum payments, and the total amount of those payments. If the consumer makes only minimum payments for these 6 months they, then, receive the 800 number and they can begin to get involved and understand it.

Senator KYL pointed out the differences between our bill and the Akaka amendment. The underlying bill, as I said, provides only for basic payment disclosure. The bill does not require credit card companies to disclose to card holders exactly how much each individual card holder will need to pay, based on his or her own debt, if a card holder is only making minimum payments.

As I said, what we do is after 6 months of these basic minimum payments, then the credit card company must let the individual know: You have X dollars remaining on your debt, the interest is Y, and your payout time will take Z, or whatever it is.

We think this is extraordinarily important. We believe it will minimize

bankruptcies. This, I suppose, is what I deeply believe. When companies charge very substantial interest rates, they have an obligation to let the credit card holder know what those minimum payments really mean, in terms of the ability of a minimum payment to completely pay back that debt—how long it takes. I have people close to me I have watched, with six or seven credit cards, and it is impossible for them, over the next 10 or 15 years, to pay off the debt if they continue making just minimum payments. Therefore, they have to find a way to resolve that debt. To date, you have two recourses.

One recourse is you go into a counseling center and they can repackage all this debt for you and put it into one and somehow work out an agreement with the credit card company. I tried to do this for someone. As a matter of fact, the credit card company would not agree to any reduced payment. Or they go into bankruptcy.

These huge numbers of bankruptcy filings show that this is, indeed, a problem. If we are going to have a bankruptcy bill, and I certainly support a bankruptcy bill, it is also important that the credit card companies play their role in disclosure. That disclosure is that if you make a minimum payment, and your interest is 17, 18, 19 percent or even 21 percent, here is what it means in terms of the length of time you will be paying your bill and what it will take to pay that bill.

I think you will have people who are more cautious, which I believe is good for the bankruptcy courts in terms of reducing their caseloads, and also good for American consumers.

I join with Senators KYL and BROWNBACK in presenting this amendment, which is a kind of compromise to the Akaka amendment, in hopes that the Senate will accept it.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank Senator FEINSTEIN for her comments. As I see it, we have probably a couple of little difficulties with amending the Truth in Lending Act—the Banking Committee has jurisdiction over that—how we will go forward. I do agree with the Senator from California that the plain fact is that credit card companies have an interest in getting reliable credit card holders not to pay on time—because they would be making 18 percent or whatever percent interest—if they are reliable people and they pay their debts. So I think sometimes their disclosure is not clear enough on the minimum payment. They put the minimum payment in big print and the total amount due is printed small because I think sometimes they don't really want people to pay it early. Some attention should be given to that, and I would consider their amendment.

Let me repeat what we are about here. We have been hearing all day, virtually, about health care bankruptcies as if this bankruptcy bill does not provide relief for people who have health care debts. It certainly does. What we are about is to reform the procedure of Federal bankruptcy courts in America. All over this country there are Federal courts, bankruptcy courts. They handle the petitions of people who have incurred debts that they say they are unable to repay. They would like to wipe out those debts, not owe anybody anything. Stop the phone calls, stop the lawsuits—nada—not pay what they owe.

We provide for that. As has been stated before, the last numbers we have, 1.6 million people have filed that way.

I would say without doubt that a number of those people who have filed, quite a number, really needed that relief for whatever reason. They got themselves in serious financial trouble. It is interesting that people who manage their money well are very careful with how they spend. They don't run off and buy new cars. They take care of their money carefully. They don't usually end up in bankruptcy court—very seldom. Look around at your neighbors, the people you know who take care. They don't overdress. They drive a modest car. They take care of their money. They are not filing bankruptcy.

Some of them get into trouble through no fault of their own, no doubt. But I am just saying that.

There are advertisements all over America in newspapers and late night TV and cable: Come on down. Wipe out your debts. You don't have to pay what you owe. Just come on and talk to old Joe, your good, friendly bankruptcy attorney, and he will just wipe them all out.

Do you know what they tell them when they come in there? They say: Take out your credit card. I want you to take your paycheck that is coming in now, you pay that to me, pay my fee, and you put everything else on your credit card. Then when you are bankrupt you just wipe that out and you don't have to pay the credit card company.

That is the way it works. We know that. People are following the advice of their lawyer. Lawyers are giving them advice based on what the law allows them to do.

Mr. President, you are a lawyer. When you come in there, the law allows you to tell your client that is what they ought to do and it is going to save them money. Then they do it. It is not illegal. I guess it can't even be said to be unethical, because it is provided for under the Federal bankruptcy law that we in this Senate are responsible for creating, monitoring, and fixing when it is not working right. That is all I am saying. We are not here to deal with the uninsured on a bankruptcy reform bill. We are not here to fix all the language on bank lending and interest rate problems in America on a bankruptcy bill.

This legislation is now up for its fourth time in the Senate. We have already had four markups in Judiciary over 8 years. It is basically the same bill. It is time for us to have some reform. That is all we are saying.

I want to talk about the health care debt. I hate to say it. We have had some demagogic comments. You know, some of them have been down here—not Senators FEINSTEIN and KYL—talking about credit card companies. When they give out money they are bad companies, as though they are the evil forces. I know they have a profit interest. I know they like to get that high interest rate. I know they are not unhappy if my mother sends in by mistake the minium payment rather than the total debt due when she probably would have paid the total debt due if she could read those complicated forms. I am not saying they don't have an interest in making a profit. They do. But the very act of any credit card company that provides money to Americans and then they don't pay it back, who is oppressing whom here? We have class warfare rhetoric going on such as the credit card companies ought to be blamed for providing money to people who do not pay it back. That is just an aside; not particularly valuable, I suppose, in the course of this debate.

We are trying to create a system that allows us to fairly and responsibly wipe out people's debt so they don't have to pay what they owe.

What about medical debt? If you have enough money to pay some of your debt, let me ask you: Should you pay your doctor, should you pay your hospital, or those evil entities? If other people are getting paid money, ought not they to be paid? That is in some sense what is being suggested here.

Let us take a look at what the deal is. This is to repeat, the deal is this: On this reform, people who file for bankruptcy who make above median income may be required by the bankruptcy court to pay at least a portion of what they owe based on their income as they show it to the court. If their income is below median income, they wipe out all their debt, as they always have.

There is a growing concern in America that doctors, lawyers, high-income people run up a bunch of debt, and they have decided they would rather wipe it out than to pay it back, and they go into bankruptcy court. Do you know they can do it? Now a person with a $200,000 a year salary can have $100,000 in debt and go into bankruptcy court and wipe out those debts today and not pay any of it, be free and clear.

Under this bill, they would say, Wait a minute. Your income is high enough. Over 5 years is all they can be made to recompense the debt when they got money or services. We are going to scale out what we think you can pay for at least 5 years so that those people you got money and services from will get something back. You don't get to wipe out all of your debt. That is what we are talking about.

What the experts have told us in the Judiciary Committee, of which I am a

member, is that 80 percent of the people who file bankruptcy are below median income. Surprise, surprise. Most people who are filing bankruptcy have lower incomes. So 80 percent will not ever be in the higher level and not be required to pay back any of their debt, whether they are medical debts, gambling debts, automobile repair debts, whatever those debts are. They won't be required to do that.

In addition, the bill provides for special circumstances, and the court can still not make them have to pay back any of it. The expert witness we had in Judiciary Committee a few weeks ago said that based on his opinion and what he has studied, he felt probably an additional 7 percent would qualify there.

I submitted yesterday, and it was agreed to, the Sessions amendment to the bill that explicitly states health care can be a special circumstance that would cause a person not to go into chapter 13 and the court could find them to stay in chapter 7.

What Senator KENNEDY's amendment would do is provide protection for the rich. It would provide no protection, no benefit whatsoever for poor people—people making below median income. They do not get any benefit out of it. He is providing an amendment that says somebody making $200,000 or $300,000 a year won't have to pay a dime to his local hospital; won't have to pay his doctor bills; won't have to pay his pharmacy. Why? That is not right, in my view.

Not only that, it goes at the core of what this legislation is about—trying to bring some balance into the system to treat poor people fairly; let them wipe out a bit of their debt, and people with some income to pay it back. The court would require them to pay some of that back, depending on the level of that income. I think we need to think about that.

Let me say this: I have been around this bill now since I have been in the Senate. There is a Professor Elizabeth Warren who has been absolutely incredibly determined to defeat this bill. She has written op-eds, and she has distorted this legislation, in my view. She has not accurately stated the facts, and she has been given every opportunity. She was allowed to testify at the last hearing which I referred to. I want to comment on some things that I think are important which this professor ought to be aware of.

On the eve of our hearing, she announced this big, new survey that 54 percent of people in bankruptcy are in bankruptcy because of medical bills. Therefore, we ought to collapse, I suppose, and not have bankruptcy reform on that view.

Let me show you what the accurate numbers are.

Her study involved interviews of certain numbers of people; about 1,700 people as I recall, 1,700 bankruptcy filers they surveyed. They have a very broad definition of what a medical bankruptcy is. Whoever heard of a medical bankruptcy?

I see the Presiding Officer, an attorney from the State of Florida.

There are bankruptcies; you go into bankruptcy. This is not a medical bankruptcy. Medical debts are part of a debt you may owe. Maybe you don't have any medical debt. But it is not medical bankruptcy. It is bankruptcy. According to the column on medical bankruptcy, her definition of medical bankruptcies is gambling debts, and alcohol and drug abuse, in addition. So if you have alcohol, drugs, or gambling, she counts that as a medical bankruptcy. That goes to show you the tilt in her report that she accounted with such great fanfare a few weeks ago.

Now, interestingly, the Department of Justice, which operates the U.S. trustee system in 48 States—they work in the bankruptcy courts. They try to watch out for fraud and abuse. They did a survey in 2000 to 2002 on medical cost as a factor in bankruptcy cases. They reviewed 5,203 chapter 7 cases from 48 States. Only slightly more than 5 percent of unsecured debt reported in those cases was medically related from actually looking at their bankruptcy filing.

When you file bankruptcy, you fill out a form. You ask the court to wipe out these debts so you do not have to pay them, and you list your debts. If you do not list a debt, the court cannot wipe it out. Everyone today who chooses to file chapter 7 can wipe out their debts, but they have to list them. All we have to do to determine how much of the total existing debt is based on medical is to look at the files. That is what the U.S. Trustee did. They found 5 percent of the total debt was medically related. They also revealed in their study that 54 percent of the cases listed had no medical debts whatever. Fifty-four percent did not mention any medical bill—not a $25 bill to the doctor or a $50 bill to the pharmacist.

They noted that those who did have medical debts—and it has been suggested that Americans are crushed under huge medical bills; sometimes that happens, I do not deny that—they found that 90 percent of the cases that did have medical debts reported debts of less than $5,000. If you are making $75,000 or $80,000 a year, you might be able to pay back part of that $5,000. So why shouldn't they pay back a portion of that cost? Even in those cases where a medical debt was listed on their petition for bankruptcy, the medical debts only accounted for 13 percent of the total unsecured debt for those files.

That is a completely different picture than what we have been hearing today. This is a completely different picture, I submit, than we have been hearing from Professor Warren, who has opposed bankruptcy reform for any reason she can conjure. I have read her statements, and they have not been objective. This is another example of it. I don't appreciate it. She can say what she chooses. Senators can quote her numbers all they want, but I believe those numbers from the U.S. Trustee Program based on review of actual bankruptcy filings where debts have to be listed are accurate, far more accurate than the other.

Now, if you do have medical debts and those debts tip you over into bankruptcy—maybe you were getting by, and, bam, you have an $8,000 bill you cannot handle and you feel you have to go into bankruptcy. If your income is below median income in America, you wipe out every bit of that debt. For 80 percent of the people, they will be able to do that if that is what they choose. If they make above that higher income level and can pay back, according to the court, some of their hospital debt, they ought to pay it back. I don't apologize for that. That is what we ought to do. That is what this bill strives to do.

As my amendment we passed yesterday explicitly states, if medical causes are a problem and extraordinarily difficult, medical problems can be a factor for the court to allow those with incomes even above median income to go into chapter 7 where you wipe out all your debts rather than chapter 13 where you pay back a portion.

Finally, chapter 13 has many good values. There are many things good about chapter 13. This will shock some of my colleagues. In Alabama, the latest reports I got from our bankruptcy judges are that around 50 percent of the filers in Alabama file under chapter 13. Why would they agree to pay back part of their debts? No. 1, they like paying back their debts. Like under chapter 7, the creditors can no longer call them, they cannot be sued, and they cannot be harassed at their workplace. Any lawsuits filed against them are stayed and stopped. The money is paid to the bankruptcy court. They pay out a percentage to each of the creditors based on the court's finding of how much each is entitled to get. They do this and work their way out of it, and they are happy. They are able to keep their automobile, often, and cram down the value of it. Maybe they bought an automobile for $25,000 and they kept it 3 years. They went into bankruptcy, and it is now worth $15,000. When they recompute the numbers, they only have to pay back $15,000. They actually walk away from paying an obligation they promised the dealer or the bank. It may help them keep a home. There are a lot of reasons why lawyers who represent their clients think chapter 13 is not such a bad thing. In fact, it is in the interest of the client.

Those people I refer to in Alabama who voluntarily choose chapter 13 could choose chapter 7 without any hesitation if they thought it was better. Just because someone is moved into chapter 13 does not mean it is all bad. In fact, many people choose it for a variety of reasons.

Anyone with median income or below or even above who has extensive medical bills will either be able to wipe

them all out if they are below median income; if they are above median income, they can be required to pay some of that debt back in monthly payments in a period not to exceed 5 years. That is fair. That is just. Who knows, it might help our hospitals keep their doors open instead of having to close.

I feel strongly about this bill. Every issue that has come up now has come up previously. It is time to move forward. Let's get this bill done, complete this work, and help improve the integrity of the bankruptcy system.

It also provides tremendous benefits for women and children. They have a much higher priority in bankruptcy for alimony and child support. It eliminates the obstructive use of bankruptcy court to block evictions, eliminates a lot of other abuses, and contains some attorney fees in ways that have not been good in the past. There is a lot that is helpful that will streamline our system and make it better.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I listened with some interest to my colleague and his description of the bankruptcy bill. I have felt for some long while, and have voted that way in the Senate, that the pendulum swung a bit too far in bankruptcy and needed to be adjusted some. I believe the last time we voted in the Senate was 5 years ago.

But I am concerned there is an effort on the floor of the Senate to turn back every single amendment that is being offered, believing that the only body of thought that has any merit at all is that which came out of the committee; that all of the proposals that are offered on the floor of the Senate somehow are without merit; that the adjustments or the approaches that might be helpful to some people who are more vulnerable are provisions without merit.

They may find, it seems to me, if they turn back all of these amendments, that there might not be so much support for the bankruptcy bill as there has been in the past.

Let me talk for a moment about this issue of credit cards. My colleague just spoke about the credit card companies. First of all, let me admit, I think there have been abusive bankruptcies. There is no question about that. It is one of the reasons I believe the pendulum was swung a bit too far and probably should be brought back a bit. But there are two sides to all of this as well.

We have credit card companies these days that blizzard this country with credit cards, wall to wall. Go to a college campus and take a look at every mailbox. Credit card companies want to offer credit cards to people who have no income and no jobs. They say: Take our credit card. Take a second credit card. Take a third and a fourth.

My son was age 10 when he got a preapproved credit card, a submission from Diners Club. He was 10 years old. So I called Diners Club. I said: It's a good thing I got ahold of it before my son did. He would have probably been in France.

I guess a 10-year-old couldn't travel. But the fact is, he probably would have been interested in doing something with that credit card.

They said: Well, it was a mistake.

It was not a mistake. And it is not just Diners Club. Go through the whole list of credit cards. It is not a mistake that they are sending credit cards to people who have no income, people who have no jobs, people who do not have a prospect of income. Do you know why it is not a mistake? Because they take these giant mailing lists and they ship these preapproved credit cards to everybody, understanding that some people are going to get them who should not get them, and they won't pay, and so they will just figure out how to deal with all that with higher charges to everybody else, and at some point they will get relief from Congress, even, on bankruptcy issues.

It is not just credit cards. Go down the street someday and see the picture window that beckons you, in big red color type, that says: Hey, come over here. Buy our product. We'll give you a zero-percent interest rate until next August. Before you get home, we will send you a rebate check. Come on, buy it. It doesn't matter whether you can afford it or not, buy our product.

Turn on the television set in the morning and hear the advertisement from the company that says: Bad credit? Come and see us. You have not been paying your bills? You have a problem on your credit report? Come and see us. We have credit available for you.

So there are two sides to all of this as well. Those who are blizzarding and papering this country with credit cards and debt, those who know better, even as they do it, ought not come to this Congress and say: Well, now we have some problems. Now we have some defaults. We want you to tighten the bankruptcy laws.

I think if the majority decides that in every circumstance every amendment that is going to be offered in the Senate on these issues is going to be turned away, perhaps they will not have the robust vote on bankruptcy reform they expect.

SOCIAL SECURITY

Mr. President, I think this issue of bankruptcy in some ways ties to another very significant issue that we are debating in the Congress and will be debating across the country for months; this issue of Social Security. There are so many millions of Americans—tens of millions of Americans—often women, often in their seventies, eighties, and nineties, often living alone, whose only source of income is a Social Security payment each and every month. It is the difference between their ability to live, to eat food, to buy prescription drugs, to pay rent, and their not having the ability to do those things.

You go back to 1935, when Franklin Delano Roosevelt signed the Social Security bill. Fifty percent of America's senior citizens who reached retirement age were living in poverty. In this great country of ours, one-half of our elderly were living in poverty.

What a wonderful country this is in which to live. There is no question about that. We share this globe with 6 billion people—6 billion of them. It is only us who have the opportunity to live in this country. Six billion people are our neighbors. One-half of them have never made a telephone call. One-half of them live on less than $2 a day. A billion and a half people do not have access to clean, potable water every day. We are lucky enough to live here.

But just think, 70 years ago, in this great country, as we were building and creating and expanding our country, one-half of the people who reached retirement age were living in poverty. They helped build this country. They worked hard. They went to work every day. They did not complain. They did the best they could and reached that period of their lives where they had a declining income situation because they were not working anymore. They were retired and living in poverty.

Well, this country did something about that, and it ought to be proud of it. Franklin Delano Roosevelt signed a bill called Social Security. Yes, the same people who are now skeptical about Social Security back then attacked him unmercifully. Social Security was decried as creeping socialism. It was decried as Government interference. The fact is, the Social Security Program created an insurance program that all workers paid into for the purpose of providing a stable insurance policy upon retirement that would always be there, a guaranteed benefit upon retirement that you could count on. And like that, the poverty rate among America's senior citizens went from 50 percent to now slightly less than 10 percent.

This program has lifted tens of millions of Americans out of poverty. It has worked, and worked well. And as this Congress now talks about bankruptcy legislation, let us talk about the issue of that which has prevented so many people from having to file bankruptcy, and that is the Social Security Program that has provided stable, predictable, consistent, and dependable revenue from an insurance program when people retired from their jobs. It has worked, and worked well for over 70 years.

There were some who did not like it in the 1930s and 1940s. They were aggressively opposed to Social Security. Their ideas live on even today. They would like to take the Social Security system apart because they believe it is, in the words of one of the far right conservatives, the ''soft underbelly of the liberal welfare state.'' Those are his direct words.

In 1978, President George W. Bush ran for Congress in Texas, and he said: Social Security will be broke in 10 years. So in 1978, President Bush said Social Security would be flat busted in 10 years, by 1988. Of course, he was not accurate. But he said back then we should go to private accounts in Social Security.

Now, all that says to me is that this is not about economics for this President. It is about philosophy. I am not critical of him for that. He has every right to believe the Social Security system is somehow unworthy, ought to be taken apart, that it ought to be changed to a system of private accounts. The President has the right to believe that. He believed it back in 1978, and he manifested that belief even now as President.

But let's understand, then, that this is not about economics, it is about philosophy. In fact, there is a memorandum dated January 3, which comes from the chief strategist in the White House about Social Security, and let me quote from it. This is from Peter Wehner, who is the chief strategist in the White House on Social Security planning:

> I don't need to tell you that this will be one of the most important conservative undertakings of modern times.

Interesting, isn't it? The first paragraph describes what is happening in the President's proposal, about Social Security as ''one of the most important conservative undertakings of modern times.'' And if accomplished, it will be ''one of the most significant conservative governing achievements ever.'' Again, describing this issue as a ''conservative undertaking.'' Its success is a ''conservative governing achievement.'' And then he connects it to the commitment to the ownership society, control for individuals over their own lives, and so on.

He says:

> If we borrow $1–2 trillion to cover transition costs—

That is the first place this shows up, which is an acknowledgment that everybody understands, that the President never talks about, that in order to go to transitions to private accounts, you have to borrow money—$1 to $2 trillion. That would be borrowing money on top of the largest debt this country has ever experienced. We have the largest fiscal policy deficit in history. We have the largest trade deficit in the history of this country right now. On top of that, the President would propose a $1 to $3 trillion—this says $2 trillion—but $1 to $3 trillion borrowing in order to set up private accounts. It is: Borrow money, put it in the stock market, cut benefits in the underlying Social Security Program—I will get to that in a moment in this memorandum—and hope that somehow it will all come out all right.

Let me read what is the most telling piece in the White House memorandum about the Social Security plan:

> For the first time in six decades, the Social Security battle is one we can win. . . .

It is clear what he is saying. The White House memorandum of the strategy, No. 1, in the front end calls it a conservative undertaking, not just some policy debate about something that will strengthen the country, a conservative undertaking. Then he said:

> For the first time in six decades, the Social Security battle is one we can win. . . .

What is that battle? Go back to Alf Landon in the 1930s, who decried Social Security, and bring it back every decade since; the fact is that there are those who have never wanted Social Security, never liked Social Security, believe it is some sort of Government intrusion in people's lives and they have always wanted to basically get rid of it. That is the battle.

The White House says:

> For the first time in six decades, the Social Security battle is one we can win. . . .

Well, who wins when we decide to begin taking apart one of the most successful things that we have ever done in our history to lift people out of poverty? When you work you pay an insurance premium in your paycheck. It is called FICA and the ''I'' is for insurance. That is what it stands for. You put it in this fund, and when you retire, Social Security payments will be there for you. They don't belong to someone else, they belong to you. They are yours. And it is not just the old age benefit or the retirement benefit. If along the way you are disabled, there are disability benefits. If along the way the principal wage earner dies and you have children under the age of 18, there are survivor benefits. All of that is available to those workers who are paying these premiums month after month.

It is really interesting and—for me at least—a bit disturbing that we have turned in this country to a debate about me, me, me, and me: When is it my turn? How about me? Forget about the other guy, how about me?

I think both political parties contribute to this country. The notion of self-reliance, coming from the pioneers on the homestead, breaking sod, building log cabins, rolling up their sleeves, doing for themselves, herding cattle on the open range, hard work every day, self-reliance, I understand all that. It is a wonderful ethic that helped build this country. But there is more than that, much more than that because those pioneers on the prairie, the pioneers who homesteaded the prairies where I come from in southwestern North Dakota knew there was more than self-reliance and rolling up your sleeves and handling it yourself. It was also about building a community, building your churches and roads and schools and building the rural electric co-ops to move electricity to the farms. It was about fighting things that were more than just yourself, being a part of something bigger than yourself, fighting for women's rights, worker rights, for equal rights, for minority rights. All of that is also a part of the legacy that has improved this country and lifted it.

Now we come back to this mantra almost every day—centered now around Social Security—what about me, what about mine. I want mine right now.

The Social Security system in many ways is a compact between the generations. It is a compact from my kids to me to my parents and has been for over 70 years. Some people say: Compacts don't matter. Promises don't matter. None of this matters. What matters is what is me, mine, right now, ownership.

I don't know. I wonder sometimes if this country would be the kind of country it is if that attitude prevailed in every circumstance. There are things that we do alone that represent initiative and self-reliance that are very important, that represent the incentive to build and to do better, the incentive for success. But there are other things equally important that represent the things we do together that have helped build a great society, helped build great communities of interest and helped pull each other up as a society. To sacrifice one for the other injures opportunities in this country's future.

I have never quite understood if there is someone in this Chamber who believes there is something more important than their kids. I guess not. Most of us would aspire to do anything for our children. We love our children. We want life to be better for our children.

But following that, we also believe that when our parents reach that period in their life where we call them elderly and they have less income than they used to have and less ability to meet their daily needs and to pay for the high cost of prescription drugs and pay the rent and buy the groceries, all the things they are required to do, that we want to reach out and help them. We believe helping our parents and our grandparents is something that is important as a part of this country's responsibilities. That is what the Social Security system has been about.

We are going to have a lot of discussion about Social Security, and it is going to go from coast to coast. The President has a big old airplane, a 747, a big fat one with a hump on the nose. He has unlimited fuel, and good for him. I respect him. He is our President. He has a right to believe as he does on these issues. He is going to sell this all across the country. But we, too, have an opportunity and a responsibility. I believe strongly that what we have done to build opportunity has included the creation of a Social Security system that I know works.

Our late colleague, Daniel Patrick Moynihan, Moynihan used to say that everyone is entitled to his own opinion, but not to his own facts. My hope is as the President travels around the country, and as we debate here in the Congress, my hope is that we can agree on the basic set of facts.

The facts are contrary to the President's assertion in the State of the

Union Address. In the year 2018, the Social Security system will not be taking in less money than it spends. That was the allegation the President made. Not true, just flat not true. According to Social Security actuaries, if we have a very low rate of economic growth, much below that which we experienced in the previous 75 years, if we have that low rate of economic growth, by the year 2042, we will have less revenue coming in to the Social Security system from both payroll taxes and accrued interest on the assets than we will need to be paying out. The Congressional Budget Office says that year is 2052. That is almost a half century from now.

Pick the one you like. In any event, we do not have a crisis in Social Security. It is not going to take major surgery or a major adjustment to make Social Security whole for the long term. Our job ought to be to work together to find a way to strengthen and preserve Social Security for the long term and then strengthen and improve on the other two elements of retirement security. One is pensions, and that is to encourage more employers to offer pensions because only half of American workers are now covered. The second is private investment accounts such as IRAs and 401(k)s outside of Social Security and pensions.

We can, should, and—I hope—will do much more in incentivizing those kinds of investments. But job No. 1 for us ought to be to preserve the basic Social Security system. We can do that. We surely will do that. But first we have to turn back the philosophy of those who write memorandums from the White House and who are the chief strategists, who create the White House plan on Social Security, who say:

> For the first time in six decades, the Social Security battle is one we can win. . . .

Meaning they have never liked it. They didn't support it in the first place, and they would love to begin taking it apart first by creating private accounts; second by, in this memorandum, describing the change in indexing which will cut everyone's benefit in the Social Security Program.

I wanted to make one additional comment. I understand some colleagues are waiting. I intend to offer an amendment on the bankruptcy bill—hopefully tomorrow morning—that deals with something extraneous to bankruptcy but an issue that is important and timely.

At a hearing this morning, the Defense Department told me we are spending $4.9 billion a month in Iraq and Afghanistan. The administration has included zero in its next year's budget for that purpose. But they are asking for an emergency supplemental to fund it.

I have held hearings—my colleague from Illinois has attended those, and I believe my colleague from Florida has as well—on the subject of contracting in Iraq. There is massive waste, fraud, and abuse going on. I will describe a couple of things that have been testified to. Somebody orders 50,000 pounds of nails to be sent to Iraq for construction contracts. It turns out they are the wrong size. You know what happens? They are dumped on the ground—50,000 pounds of nails on the ground in Iraq that are the wrong size. People driving $85,000 brand new trucks. If they run out of gas or something happens to them, they leave the truck and let somebody torch it. Halliburton is alleged to be billing us for serving 42,000 meals a day to our soldiers when, in fact, they are only serving 14,000 meals. They are overbilling us by 28,000 meals a day. It is unbelievable, the massive waste, fraud, and abuse going on.

At a hearing a couple of weeks ago, we had people with pictures that showed they have massive cash in vaults and they say if you are going to pay contractors, tell them to bring a bag and we will fill it with cash. We are talking about the massive wasting of taxpayers' money going to these sole-source contracts for billions of dollars and nobody cares.

My colleague from Illinois introduced a piece of legislation last year on this subject. I talked to him yesterday about an amendment I wanted to introduce on this bill and am going to introduce in the morning, and he will join me. This is a very important issue.

I am happy to yield to the Senator for a question.

Mr. DURBIN. Mr. President, I would like the people following this debate to understand what is being said. We have spent billions of dollars on the war in Iraq, and I voted for every penny of it. If it were my son or daughter over there, I would give them everything they needed to get their mission accomplished and come home safely. I ask the Senator from North Dakota, how many official committee hearings and investigations have there been in Congress looking into the sole-source, multibillion-dollar contracting the Senator has referred to?

Mr. DORGAN. My understanding is, I believe there was only one in the House, and the bulk of that was to defend the company called Halliburton—and there were no such hearings by the standing committees in the Senate. Essentially, there has been no interest in looking at this kind of abuse. The Senator from Illinois was at a DPC hearing we held. We had a guy there who used to purchase towels. He purchased hand towels for soldiers. He held up the towels. He showed us that they are nearly three times the price of the towels they purchased for U.S. soldiers. Why? Because the company wanted its logo on the towel. So they buy a towel with a company logo on it for the soldiers and nearly double-bill the American taxpayer. This is a small issue in itself, but it is an example of what is going on, pervasively.

Mr. DURBIN. If the Senator will yield for another question, the amendment he is going to offer, which I have worked on as well and am honored to join him as a cosponsor, is modeled after the Truman Commission that was created during World War II. Isn't it true that Harry Truman, a Democratic Senator from Missouri, initiated this investigation into what he called profiteering during the war at the expense of soldiers and taxpayers, and was literally examining the practices of a Democratic President, Franklin Roosevelt, with that commission, so that here he was, a Democrat, saying he had a higher responsibility to the taxpayers and soldiers. He was going to investigate the activities of the War Department under a Democratic President. I ask the Senator, was that not the case?

Mr. DORGAN. The Senator from Illinois is correct. President Truman got in his car, as a matter of fact, and began driving around the country to military installations to see what was going on. He came back and said there is something rotten here; a massive amount of waste is going on. He convinced Congress to create the Truman Commission, which was an investigative committee. And he was a Democrat, and there was a Democrat in the White House, but that didn't stop him from investigating.

In this circumstance today, we have a Republican in the White House, Republicans controlling the House and Senate, and they have no interest in doing any oversight hearings. Our colleagues asked the committee: Will you do an oversight hearing on the issues? The answer is no. I have additional examples. How about $7,500 a month rent for an SUV in Iraq? How about Halliburton charging a dollar more for every gallon of gas, compared to what the Department of Defense could have obtained from its own supply office? How about two guys who show up in Iraq having no money and very little experience and decide they are going to be contractors? They decide to bid on contracts, and they win one. Somebody delivers a suitcase full of $2 million in cash and they are off and running. They soon got over $100 million in contracts. Some of their employees became whistleblowers because they said what was going on was crooked. These people were taking forklift trucks off an airport they were supposed to secure, taking them to a warehouse and repainting them and selling them back. They sold them to the Coalition Provisional Authority. Who is that? The American taxpayer. The Justice Department says it won't join in a false claims action because defrauding the Coalition Provisional Authority in Iraq is not the same as defrauding the American taxpayers. It is unbelievable, the lengths to which some of these people will go to avoid looking truth in the eye.

There is massive waste, fraud, and abuse. Billions of dollars is being abused and wasted and nobody seems to give a whit about it. Senator DURBIN

from Illinois introduced legislation, which I was happy to support, in the last Congress on this subject. I don't believe that got a hearing and certainly didn't get to the President's desk. My sense is that in any way we can, in every way we can, on behalf of the American taxpayer, we need to do this. It undermines our support for American soldiers if we don't have oversight. Do you think American soldiers want to be stuck in Iraq doing what their country asked them to do only to find out that those serving them meals are overbilling by 28,000 meals a day, or are double-charging for hauling gasoline in? This makes no sense. The minute you raise any of these things with the one party in this town, they say you are being totally partisan. Well, no, I think we are being a little bit like Harry Truman here. He had the guts to look truth in the eye and say when something going on is rotten, when the American taxpayers are being bilked, tax money is being pilfered, somebody ought to stand up and stop it.

I intend to offer this amendment in the morning. I am proud of the work my colleague has done as well. I have spoken longer than I intended. The Senator from Florida wishes to speak. Let me say that I will be back in the morning to offer this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

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

AMENDMENT NO. 37

Mr. NELSON of Florida. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. NELSON] proposes an amendment numbered 37.

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

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

The amendment is as follows:

(Purpose: To exempt debtors from means testing if their financial problems were caused by identity theft)

At the appropriate place, insert the following:

SEC. ___. IDENTITY THEFT.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by this Act, is further amended—

(1) by redesignating paragraph (27B) as paragraph (27D); and

(2) by inserting after paragraph (27A) the following:

''(27B) 'identity theft' means a fraud committed or attempted using the personally identifiable information of another person;

''(27C) 'identity theft victim' means a debtor who, as a result of an identify theft in any consecutive 12-month period during the 3-year period before the date on which a petition is filed under this title, had claims asserted against such debtor in excess of the least of—

''(A) $20,000;

''(B) 50 percent of all claims asserted against such debtor; or

''(C) 25 percent of the debtor's gross income for such 12-month period.''.

(b) PROHIBITION.—Section 707(b) of title 11, United States Code, as amended by section 102(a) of this Act, is further amended by adding at the end the following:

''(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor is an identity theft victim.''.

Mr. NELSON of Florida. Mr. President, I want to make sure and will ask unanimous consent, if need be, that both Senators DURBIN and SCHUMER are listed as cosponsors of the amendment.

The PRESIDING OFFICER. They are currently listed as cosponsors.

Mr. NELSON of Florida. I thank the Chair.

Mr. President, as we debate the merits on this bankruptcy bill, I offer an amendment, and I believe it is critical to improving this piece of legislation. This amendment will create an exemption from the requirements of this bankruptcy bill for victims of identity theft. The long and short of the amendment is, if you have had your identity stolen and charges have been run up on you because your identity was stolen, and if that causes you to go into bankruptcy, then you are going to have an exemption from the provisions of this legislation that said you would not be able to file bankruptcy.

It is carefully tailored as an amendment. It would not apply to every single identity theft victim. Rather, it would require identity theft victims to show they were defrauded out of the minimum dollar amount.

There is an epidemic of identity theft that has plagued millions of Americans. There are 60 Senators in this Chamber who had Bank of America Government credit card information lost or stolen over the weekend. 1.2 million other Americans, including this Senator from Florida, had personal financial information that was lost or stolen. In my particular Senate office, two other of our senior staff members had sensitive financial account information that was compromised in this incident. The lost data tapes could have names, Social Security numbers, and addresses on them.

How long down the road before we find that our Social Security numbers and other personally identifiable privileged financial information come into the hands of the thief to be used in stealing our identity, and we suddenly start finding we have charges we never made.

This phenomenon of identity theft is happening. We saw it in a big case called ChoicePoint, an Atlanta, GA, company that had hundreds of thousands of records purloined as a result of someone disguised as a regular customer of that information broker, and instead their identities are now stolen. Mr. President, 10,000 of those 400,000 stolen we know are in the State of Florida—at least 10,000. This is a phenomenon that is continuing to occur.

Identity thieves typically take advantage of the electronic records to steal people's names, addresses, telephone numbers, Social Security numbers, bank account information, or other personal, financial, and medical data.

If you were a customer of something such as ChoicePoint, an information broker, not only do you have information, such as your credit, which is covered under existing law for protection, but you have a lot of other information in there, such as I mentioned, Social Security numbers and bank accounts. What about job applications, what about drivers' licenses, what about DNA tests, what about the records of all kinds of different medical tests?

This is the alarming theft that is occurring today, and it is not being done with the hammer and crowbar of a typical thief. It is being done by sophisticated methods as we are living in this technological age.

Listen to these alarming statistics. The Federal Trade Commission says 10 million Americans were affected by identity theft last year. Identity theft is now the most common fraud perpetrated on consumers. In 2004, identity theft accounted for 39 percent of consumer fraud complaints, the Federal Trade Commission tells us. And a figure that will blow your mind is that identity theft cost the United States $52 billion last year.

Because identity thieves misuse people's personally identifiable information, some individuals are denied jobs, they are arrested for crimes they did not commit, or they face enormous debts that are not their own.

Last week, in Orlando, I met with six of those victims of identity theft. One of them was an elderly mother who was there with her daughter who, upon the passing of her husband of half a century, the daughter taking over all the financial records, and paying her mother's bills—her mother had always provided for the children's needs, so when the daughter started getting these credit card bills on the mom's credit card of $5,000 and $10,000, she paid them. It was not until a store owner in California, on the other side of the country from where this couple lives in Coca, FL, an alert store owner called and said: We want to make sure that you are willing to have this charge of $26,000 charged to your mother's credit card. Your mother is standing right here in the store in San Francisco to ring up this charge. The daughter, of course, replied: My mother is sitting right here with me in Florida. Obviously, someone is masquerading as my mother with a stolen identity.

The sad result is that even though that $26,000 charge was averted, the daughter had already paid what she thought were the legitimate debts of

her mom to the tune of $40,000, and because of that stolen identity, she can never get that back.

What happens if that is a debt that would drive a person like that into bankruptcy? Should that be used against them to prevent them from being able to have bankruptcy? I do not think we want to do that in this legislation.

The law does not require creditors to automatically erase a person's debt arising from identity theft. Creditors sometimes refuse to erase these debts or they allow credit investigations to drag on for years. This leaves some identity theft victims with no choice but to file for bankruptcy.

Let me give some more examples.

Last year, a Pennsylvania woman was victimized by a brazen identity theft. This thief was actually renting a room in the lady's house. The identity thief stole her checks, her bank card, her personally identifiable financial information. Then the thief used that information to wipe out the lady financially. One month before Christmas, this woman was forced to file for bankruptcy relief. Shouldn't this bankruptcy reform bill cut people such as that some slack? I think that is the humane thing to do.

There is another example. It is in New York. An identity thief stole the personal information of a girlfriend, and then he ran up huge debts in the victim's name. Pretending to be the victim, the identity thief took out three personal loans and even purchased two automobiles. In total, the thief ran up a tab of over $300,000. The local postal inspector in the victim's area called it the worst case of identity theft they had ever seen. In that case, the victim had no choice but to file for bankruptcy.

Should not there be an exemption in a case like this? This is a very straightforward amendment. It states that people who have been victims of identity theft and have to file for bankruptcy because of that identity theft should get a break from the stringent means test in the bill. As identity theft becomes more prevalent—and it happened last week with the revelation of ChoicePoint, an information broker, 400,000 people. It could have happened Friday night after 5 when Bank of America released the information that 1.2 million Federal employees' identities had been stolen, including 60 Senators in this Chamber. As it becomes more prevalent, more innocent people are going to encounter this situation.

I think it is only right to be fair to those victims when they file bankruptcy and not to add insult to their injury.

The Consumer Federation of America has endorsed this amendment as being in the best interest of Americans. I urge my colleagues to support this amendment.

Mr. DURBIN. Will the Senator yield for a question?

Mr. NELSON of Florida. Of course, to the distinguished assistant Democratic leader, I yield.

Mr. DURBIN. I must be living under a dark cloud because I not only had my identity stolen several weeks ago, but I am also one of the 60 Senators who, like the Senator from Illinois, was a victim of this apparent theft of a computer tape of official business credit cards of the Senate which compromises our credit cards. In my situation 4 or 5 years ago, I received a phone call from a collection agency in my home in Illinois saying: DURBIN, we finally caught up with you. I do not know if you thought you could get by with this forever. We knew we would find you. You owe our company in Denver, CO, $2,000. I said: I have never been to your company's place in Denver, CO. I have never done business with you. It turned out to be someone using my name and my Social Security number, who had run up several thousand dollars in charges. It took several months to sort it out, but I was lucky. I sorted it out. There are some stories that have come to my office, and I am sure to the Senator's office as well, where it took years before they finally came to the bottom of it.

So I ask the Senator from Florida, for those people who were victims of identity theft, maybe a credit card where charges were run up out of sight, tell me exactly what the Senator's amendment will do to protect them in this new bankruptcy reform we are considering.

Mr. NELSON of Florida. I thank the Senator for his question. Yes, the Senator may well be one of the victims that was not announced until after work on Friday afternoon at 5, but we have identified that it is 60 Senators in this Chamber, along with 1.2 million Federal employees. We are talking about this credit card that is provided for official expenses of Government business, and all your personally identifiable information is on that file. So it may well be that a majority of this Senate finds they could become the victims and experience the similar kind of agony of the six people I just met with in Orlando, that it keeps going on and on and they cannot get their identity back.

I had one who was a truck driver with special permission to drive hazardous materials. His identity is stolen and there is somebody out there driving a truck of hazardous materials who has stolen his identity.

The Senator's specific question is: What does this amendment do? What it does is carve an exemption for the people who have debts that have driven them into bankruptcy because those debts have occurred through no fault of their own. Their identity has been stolen and someone has created a credit card that then runs up bills in their name, that they did not know about, they did not intend, nor could they afford, and as a result, because they cannot get it worked out—and I wish the Senator could hear these victims, how long it takes them to get their identity back—in a timely fashion, they have to file for bankruptcy.

My amendment says this is going to be an exception from all the rigors of the bill that say a person cannot file for bankruptcy.

Mr. DURBIN. If I could further ask the Senator from Florida, this bankruptcy reform is going to affect millions of Americans. About 1 million to 1½ million a year file for bankruptcy, and all of their members of their family, of course, are affected by the bankruptcy so these people filing for bankruptcy have reached a point where their bills are so large they have said: I cannot do it, it is far in excess of what I can ever pay off, and they go into bankruptcy court asking that they have their debts relieved. They give up most of their assets in life and their debts are then paid off partially, as much as they can, and they walk out of the bankruptcy court with a new day ahead of them. That has been the law for a long time.

This bill we are considering says, wait a minute, we may not let you walk out of the court with all of your debts behind you. You may walk out of the court with some of the debts still on your shoulders that you have to keep paying. So if I understand the Senator's amendment, he is saying if the debts we are talking about were incurred not by the person filing bankruptcy but in their name because of identity theft, then for goodness sakes it should not be said at the end of the bankruptcy process that they still have to carry these debts which some criminal has incurred in their name.

Is that my understanding of what the Senator is trying to achieve?

Mr. NELSON of Florida. Indeed, the Senator has put his finger on the problem and the attempted solution to the problem, recognizing that we want to work with the banking industry and the credit card industry so this does not become a loophole that somebody can get out of following the law and be irresponsible about filing bankruptcy. We have even put it in the amendment that there has to be a threshold for the person who would have this exemption because of identity theft. For example, it would have to be a claim against the debtor in excess of $20,000, or 50 percent of all the claims asserted against the debtor, or 25 percent of the debtor's gross income for a 12-month period.

With that reasonable protection, so that somebody is not abusing the law, we come back to the basic issue of fairness.

Mr. DURBIN. If I could ask the Senator from Florida, yesterday we considered an amendment, which the Senator supported and cosponsored, which said take into consideration the members of the National Guard and Reserve who are being activated and sent overseas to Iraq and Afghanistan, risking their lives for America, that if they are gone for a year or more they may have an

economic misfortune; maybe that small business they were running fails because they are gone serving their country. So we offered an amendment yesterday which said when it comes to that bankruptcy situation we should be more tolerant, more lenient and more sensitive to these men and women who have risked their lives serving America in the Armed Forces.

When we offered that amendment the Senator from Florida may recall that yesterday some 58 Senators voted against it, many of whom will be the first to welcome these guardsmen and reservists with open arms, thank you for your service to our country. Now Senator KENNEDY has an amendment pending which says, what about the category of Americans who have overwhelming medical bills because of a medical condition they never could have anticipated and they get trapped in bankruptcy? Can we take that into consideration and not hit them as hard as others and not take their homes away from them at the end of the day? Now the Senator comes in with another category, which I think is equally legitimate, of victims of identity theft.

If I understand the Senator from Florida, he is following in the same line of argument, and that is the bankruptcy court should not be blind to reality, to the reality of the guardsmen and reservists serving our country and paying a heavy price at home in terms of their personal finances. Nor should this bill be insensitive to a single mother raising children, diagnosed with breast cancer, who as a waitress with another job cannot pay off her medical bills, or in the Senator's case an elderly person whose identity was stolen and charges were run up beyond anything that she could handle.

It is my understanding that what you are saying is this law should be sensitive to the realities of people who are doing the right thing but are being victimized, either by medical illness or by identity theft. Is that the intention of the Senator?

Mr. NELSON of Florida. The Senator is correct. Indeed, this amendment is saying that under the circumstances, where a person, through no fault of their own, because they have been preyed upon by larceny, by a thief, and bills have been run up because their identity has been stolen, and that happens, tragic as it is, to cause them to go into bankruptcy, that they should be exempted the harsh means test provision of this bill and should be allowed to file Chapter 7 bankruptcy under those circumstances. The stolen identity is enough. The debts run up are enough. The harassment of trying to get your identity back is enough. Lord help them, then when they have to file bankruptcy, that ought to be enough. But to say that they cannot file Chapter 7 bankruptcy under this condition? What are we trying to do to our fellow Americans? This amendment perfects that glaring error and inconsistency.

I yield the floor.

Mr. DURBIN. Mr. President, I thank my colleague from Florida for his leadership on this issue. I am happy to join him as a cosponsor. I would like at this time to offer another amendment which I would like to describe.

AMENDMENT NO. 38

I ask the pending amendment be set aside, and I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. COBURN). Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. DURBIN), proposes an amendment numbered 38.

Mr. DURBIN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To discourage predatory lending practices)

SEC. 206. DISCOURAGING PREDATORY LENDING PRACTICES.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' at the end;

(2) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(10) if the creditor has materially failed to comply with any applicable requirement under section 129(a) of the Truth in Lending Act (15 U.S.C. 1639(a)) or section 226.32 or 226.34 of Regulation Z (12 C.F.R. 226.32, 226.34), such claim is based on a secured debt.''.

Mr. DURBIN. Mr. President, there is hardly one of us who has not heard a story that goes as follows: An elderly widow is living in her family home. Her children have moved out. She is getting up in years, but she is happy in her home, exactly where she wants to be. As time goes on, life gets more complicated for her, and someone takes advantage of her. There is a knock on the door and someone says to her: I just took a look at your roof. You must realize it is in terrible condition, and luckily I do roofing. I will be happy to repair your roof. Or, if you put vinyl siding on this old house, you could save so much on your heating bill. Or, did you notice that your basement foundation is starting to crack? That could be dangerous, and luckily I do the work.

You hear the story over and over, that this person—I do not mean to pick on elderly widows; it could be a widower, too—says: Sure, that sounds good. You seem like a nice, bright young man. Why doesn't your company come in and fix my house.

They say: Great. Here is a little contract we would like you to sign to have the home improvements.

They look at it and they say: It is tough for me to read it. I am not a lawyer.

Trust me, it is a standard contract.

They sign on the dotted line.

You have heard this story. Maybe someone in your family has been through this. Then what happens. The work turns out to be shoddy. They do not do what they are supposed to do. The charges are outrageously high. Then you take a look at the contract, and it turns out the contract creates a lien on the property, perhaps another mortgage on the property, perhaps a balloon payment, maybe interest rates that go right through the roof for the unsuspecting person. There are finance companies behind these door-to-door con artists who write out these contracts and end up, when all is said and done, owning the home.

That is not an outrageous story I have told you. It is repeated over and over, day in and day out, in my home State of Illinois and around the country. That is why I am proposing this amendment. This is called predatory lending. You know what a predator is: the animal that goes out trying to devour its prey. Predatory lenders do just that, too. This amendment is designed to penalize the growing number of high-cost predatory mortgage lenders who lead vulnerable borrowers down the path to foreclosure and bankruptcy. It is about balance, something this bankruptcy bill desperately needs.

If we are going to change the bankruptcy laws because too many people go to bankruptcy court, then we must also address predatory lending, which I have described, which is driving too many vulnerable Americans into bankruptcy court. If we are going to make the door to the bankruptcy court harder for consumers to open, then we must also make sure we are not protecting predatory creditors that force consumers to knock on that door.

There is no uniformly accepted definition of predatory lending. It is a lot like the old Supreme Court saying: I will know it when I see it. But high-pressure consumer finance companies have cheated unsophisticated and vulnerable consumers out of millions of dollars using a variety of abusive credit practices. Let me give examples of what they are: hidden and excessive fees and interest rates; lending without regard to the borrower's ability to pay; repeatedly refinancing a loan over a short period of time without any economic gain, known as loan flipping; committing outright fraud and deception, such as intentionally misleading borrowers about the terms of the loan.

Some automobile lenders in the used car industry have gouged consumers with interest rates as high as 50 percent with assessments for credit insurance, repair warranties, and hidden fees, adding thousands of dollars to the cost of an otherwise inexpensive used car. Pawn shops in some States have charged annual rates of interest of 240 percent or more. I could give you a lot more description of these predatory lending practices. Let me just tell you a few stories.

My colleagues who were listening to this debate know I have offered this before. They are likely to say: Here

comes DURBIN again with the same old amendment. I am here again as I was in a previous Congress because this problem is still with us today. The last time I called up this amendment on debate on a bankruptcy bill we lost by one vote. This problem has only become worse since Congress defeated that amendment.

As predatory mortgage lending increases, it continues to target lower income women, minorities, and older Americans. In 1998, Senator GRASSLEY of Iowa, my friend and colleague and the author of the bankruptcy bill, held a hearing in the Senate Special Committee on Aging looking into predatory lending. At the hearing, this is what a former career employee of that industry had to say.

Listen to how he described his customers:

> My perfect customer would be an uneducated woman who is living on a fixed income, hopefully from her deceased husband's pension and Social Security, who has her house paid off, is living off credit cards but having a difficult time keeping up her payments, and who must make a car payment in addition to her credit card payments.

This witness acknowledged that unscrupulous lenders specifically market their loans to elderly widowed women, blue-collar workers, people who have not graduated with higher education, people on fixed incomes, non-English speaking, and people who have significant equity in their homes.

That statement was made in 1998, 7 years ago. Six years later, February 2004, the Special Committee on Aging held another hearing on the same subject. At this hearing, held just 1 year ago, this is what a witness from the Government Accountability Office said:

> Consistent observational and anecdotal evidence, along with limited data, indicates that for a variety of reasons, elderly homeowners are disproportionately the targets of predatory lending. Because older homeowners on average have more equity in their homes than younger homeowners, abusive lenders could be expected to target these borrowers and ''strip'' the equity from their homes. The financial losses older people can suffer as a result of abusive loan practices can result in the loss of independence and security, significant decline in the quality of life.

So has the problem of predatory lending gone away, as my opponents might argue? No, it has gotten worse.

What else has been going on since we first considered this in the Senate?

The AARP Litigation Foundation, which files lawsuits to help seniors, has been party to seven lawsuits since 1998 involving allegations of predatory lending against more than 50,000 elderly Americans. As of February 2004, six of their lawsuits have been settled, and one is still pending.

Minorities are still being targeted by these unscrupulous lenders as well.

According to the Center for Responsible Lending, Hispanic Americans are two and a half times more likely than whites to receive a refinancing loan from one of these lenders. African Americans are more than four times more likely to be targeted.

Let me share a credible article from the Los Angeles Times of February 2004 by Ameriquest, one of the largest subprime lenders. The article includes a story about how they tricked a minority, Sara Landa, from East Palo Alto, CA. She speaks Spanish and limited English.

She entered into a settlement with one of these companies, Ameriquest. After that, it was alleged that Ameriquest employees tricked her into signing a mortgage that required her to pay almost $2,500 a month, far more than her income from cleaning houses. All the negotiations were in Spanish. All the loan documents were in English. The only thing she ever received from Ameriquest in Spanish was a foreclosure notice. It is amazing.

In this same article, you will find statements from many ex-employees of this company, Ameriquest, asserting that while they worked for this company they were engaged in improper and predatory practices.

Mark Bomchill, a former Ameriquest employee, said he left his job because he didn't like the way Ameriquest treated people. He said that the drive to close deals and grab six-figure salaries led many of his fellow employees astray. Listen to what he said. He said:

> They forged documents, hyped customer's credit worthiness and ''juiced'' mortgages with hidden rates and fees.

Two other former employees said borrowers were often solicited to refinance loans that were not even 2 years old. This happened even though Ameriquest pledged in 2000 not to resolicit customers for at least 2 years. They completely ignored that pledge.

Nearly one in nine mortgages made by Ameriquest last year was a refinance on an existing loan less than 2 years old. The abuses don't end there.

Former Kansas City Ameriquest employees described another predatory practice by the same company where they would fabricate borrowers' incomes and falsify appraisals.

Lisa Taylor, a former loan agent from Sacramento, said she witnessed documents being altered as she walked around the vending machine that people were using as a tracing board, copying borrowers' signatures on an unsigned piece of paper.

If you think these are isolated examples, exaggerated stories, let me refer you to a 2004 GAO study that found that this is a prevalent problem in the subprime mortgage industry—this predatory lending. They found plenty of indications that predatory mortgage lending was a major and growing problem in the year 2004.

According to the 2004 study, in the past 5 years, there have been a number of major settlements resulting from government enforcement acts. I will mention a few.

Household International agreed to pay up to $484 million to homeowners across America to settle allegations by States that it used unfair and deceptive lending practices.

In September 2002, Citigroup agreed to pay $240 million to resolve FTC and private party charges that Associates First Capital Corporation engaged in systematic and widespread abusive lending practices.

In March 2000, First Alliance Mortgage Company settled with the Federal Trade Commission, six States, and the AARP to compensate borrowers more than $60 million because of their deceptive practices to lure senior citizens. An estimated 28 percent of the 8,700 borrowers in that suit were elderly.

These are documented. While some victims of predatory lending are lucky enough to receive compensation because of these lawsuits, many more have fallen to predatory lenders, and they never can turn to our legal system for help.

Here is an astonishing statistic. Mr. President, 1 in 100 conventional loans ends in foreclosure, but 1 in 12 subprime predatory loans ends in foreclosure. While it might be expected, these loans, because they are made with less creditworthy borrowers, would result in an increased rate of foreclosure, but the magnitude of the differences tells us that there is more at stake here than just the creditworthiness of the borrower.

The Senate Banking Committee held a hearing in July 2001. At that hearing, a report from the Center for Responsible Lending was released which showed the predatory lending practices cost American borrowers an estimated $9.1 billion annually.

Let me tell you why I am offering this amendment. Imagine, if you will, that it is your mother, father, grandmother, or grandfather alone in their home, and they signed this home improvement loan or signed this refinancing, which you learn about months later. You say: Grandma, you didn't tell me that you had somebody come in and do some work, and you didn't tell me you signed these papers. Did anybody read them?

No. He seemed like such a nice man, and he told me it was a standard form.

And you take it over to your family attorney. He says: My goodness. What your grandmother signed here is a remortgage of the property. She owned the home, and now, by buying vinyl siding, she has remortgaged her property and promised to pay back just a few hundred dollars a month to start with, but in a matter of a year or two, it explodes. The balloon pops, and it turns into a $2,000-a-month payment.

How is she going to pay it? Let us assume the worst circumstance—she doesn't pay. The mortgage is foreclosed on. She is about to lose her home, and she files for bankruptcy. She has nothing left on this Earth except a Social Security check, maybe a little pension check, some savings, or meager savings. She goes into bankruptcy court

to try to get out from under this burden. Guess who shows up at the bankruptcy court. The same predatory lender shows up saying: We own whatever she owns. She signed this mortgage.

Is it fair? Is it fair for somebody to take in a legal document, a predatory mortgage, that takes advantage of elderly people, and then be protected in the bankruptcy court? I don't think so.

If we are going to hold people coming into bankruptcy court who file for bankruptcy to the high moral standard of paying back their debts, should we not hold the creditors walking into bankruptcy court to a similar high moral standard that they must have followed the law, that they must have engaged in this highly regulated, moral conduct?

The amendment I am offering prohibits a high-cost mortgage lender from collecting on its claim in bankruptcy court if the lender extends credit in violation of existing law—the Home Ownership and Equity Protection Act of 1994, which is part of the Truth in Lending Act.

I am not reinventing the law. I am just saying when you issued this mortgage, you violated the law. You took advantage of a person by violating the law. You cannot then go in court and say protect me with the law. You can't have it both ways. If you broke the law to incur this debt, you can't go in court and ask for the law to protect you to collect the debt.

That seems to me to be just. If you were legal in the way you treated this person, then you can use the law in enforcing your debt. If you were illegal in the way you treated this person, you can't go into court and use the law to collect on that illegally based debt. That is simple.

When an individual falls prey to lenders and files for bankruptcy seeking last resort help, the claim of the predatory lender will not be allowed against a debtor. If the lender failed to comply with the requirements of the Truth in Lending Act for high-cost mortgages, the lender has no claim in bankruptcy court. The law has long recognized the doctrine of unclean hands where a party to an illegal agreement is not able to recover damages from other parties to such an agreement because the claimant itself was the party to an illegality.

My amendment is not aimed at all subprime lenders. The amendment will have no impact whatever on honest lenders who make loans that followed the law even if the loans carry high interest rates or high fees. Instead, it is directed solely at the bottom feeders, the scumbags, the predator lenders. My amendment reinforces current law and will help ensure that predatory lenders do not have a second chance to victimize their customers by seeking repayment in a bankruptcy proceeding.

Second, this amendment is not aimed at technical violations of the Truth In Lending Act. The violations must be material. I specifically made that change in my language to address some of the concerns raised in the first debate.

Third, the amendment does not amend the Truth In Lending Act. There is no question as to whether the Senate Banking Committee has any jurisdiction. We do not change the Truth In Lending Act. I point out the bankruptcy bill does amend that act in some parts. My amendment absolutely does not.

Some may argue the amendment is unnecessary because current law is sufficient. I disagree. I recognize Congress has passed numerous laws that Federal agents and regulators have used to combat predator lending, but predatory lending is on the rise. Many Americans are being cheated and duped by these unscrupulous business people.

President Bush has attempted to promote home ownership as part of the vision of an ownership society. I applaud him. For my wife and me, the first time we purchased a home was a turning point in our lives. We started to look at the world a lot differently. This was our home, on our block, in our neighborhood, in our town. It is an important part of everybody's life. I support that. But unless we rein in the abusive behavior of some in the lending industry, we will be promoting not an American dream, but an American nightmare for thousands of homeowners.

Let me say one more word. The last time I offered this amendment, the most stunning thing I learned was that the major financial institutions in America, the big boys, the blue chips, the best in the industry, oppose my amendment. You think, wait a minute, why would the best financial institutions in America oppose an amendment to stop people from cheating and violating the law in issuing mortgages? I never quite understood. Maybe their logic is this: If we let this amendment in where some of the worst lenders are held to the standard, then maybe the Government will take a closer look at us, too, so let's be opposed to all amendments. Let's try to protect everybody in the industry even if what they are doing is fundamentally unfair and even illegal. That is the best argument I can come up with.

I urge those in the financial industry who may be following this debate and desperately trying to see this bill pass, please be honest about this. Do you want to protect the subprime lenders, these predatory lenders who are engaged in the worst practices in your business? Why in the world would you want them to stay in business? Why would you want to protect them in court when they give lending a bad name, which is your business?

There are an awful lot of examples I can give. Let me mention a few cases before I close. Alonzo Hardaway owned a home in Pennsylvania for 28 years, raised his family there, went through a divorce there, his parents died there, but he no longer lives there. As of summer, he was living in a homeless shelter. Why? Because in 1999 a home remodeler and subprime lender convinced Mr. Hardaway to take a home equity loan for $35,000 at 13-percent interest to redo his kitchen windows and doors. When this 56-year-old man's trash hauling business faltered, he defaulted on his loan, his home was sold at a sheriff's sale and he was evicted in March of 2004. The loan is with The Associates, a large subprime lender later bought by Citigroup, which 2 years ago paid $215 million in fines for unscrupulous lending. That was documented in the Pittsburgh Post-Gazette.

There are many other examples. I mention one or two of particular interest. Here is one of a victim of appraisal fraud known as ''house flipping.'' Ms. Wragg, a retired school aide, found the home of her dreams in a little neighborhood in Brooklyn. It was a classic brick house with a porch, a backyard. She had not originally set out to be an owner, but her eyes drifted to an advertisement offering the home of her dreams. She began her journey.

Now, 2 years later, she said that journey has turned into a nightmare. Her life savings has been depleted by a house she could never afford. The house was appraised at far more than it was worth and Ms. Wragg was given two mortgages she would never have qualified for, carrying costs more than double her income. She blames the mortgage company, the appraiser, the lawyer who represented her, and United Homes, LLC, of Briarwood, Queens, the company that owned the home, placed the ad, and arranged almost everything about closing. This is what she said: I trusted them, because I had never done this before and I didn't know any better.

These cases go on and on. I will not read them into the RECORD. There is one in your community, in your State. Maybe it happened in your family. You have read about them. You have seen them on television. And I am sure you wondered, Who is going to stop this abuse and exploitation? We only stop it when we tell these companies we will not protect you in bankruptcy court. You cannot take away the home of someone if you have engaged in illegal practices in issuing your mortgage.

When we consider the amendments before the Senate on this bankruptcy bill, I hope we will not only hold those walking in the bankruptcy court seeking relief from their debts to high standards of moral conduct, we will also hold the creditors who are seeking repayment of debts to the same conduct, perhaps just legal conduct, which is the only standard I have included in my amendment.

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

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

The bill clerk proceeded to call the roll.

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

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

Mr. FRIST. Mr. President, I ask unanimous consent that at 4:55 today, the Senate proceed to vote in relation to the following amendments: Kennedy No. 28, Kennedy No. 29, and Corzine No. 32; provided further that prior to the first vote there be 10 minutes equally divided for debate, and that there be 2 minutes equally divided for debate prior to the second and third vote. I further ask consent that no second-degree amendments be in order to the above amendments prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. REID. No objection.

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

The Senator from Massachusetts.

AMENDMENTS NOS. 28 AND 29

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

Mr. President, in America, we believe that if you work hard, meet your family responsibilities, then you should be able to provide for your family. You should be able to afford a decent home for your family in a safe neighborhood. You should be able to send your children to college so they can enjoy lives of opportunity and happiness. You should be able to save for a comfortable retirement after years of disciplined saving and careful planning. That is the American dream. It is a dream of opportunity, of fairness, of infinite hope for the future.

But in recent times, average Americans have had to work harder and harder to fulfill their hopes and dreams. In just the past 4 years, housing prices are up 33 percent, college tuition is up 35 percent, and health care costs are up 59 percent. Families are counting their pennies. And now this Republican Congress wants to make it even harder with this bankruptcy bill.

Corporate CEOs can force their companies into bankruptcy and enrich themselves, but they are not held accountable. This bill ignores their irresponsible actions. But an average American facing cancer can lose everything under this bill: their home, their savings, their hopes, their dreams. They get no second chance.

One day, you are doing well. You have done all the right things. Your family is healthy and happy. And the next day, you discover that you have cancer, and even though you have health insurance, you are left with $35,000 in medical bills. You cash in your savings. You sell your second car. You sell your mother's wedding ring. You take out a second mortgage on your home. But it still is not enough. Half the Americans in bankruptcy face this exact situation. Their illness was bad enough, but now their medical bills are destroying their lives, and this bill adds further injury to their pain.

CEOs can get away with it. They are not held responsible for their companies' bankruptcies. Look at Enron, WorldCom, and Polaroid. But this bill requires average citizens to pay and pay and pay and pay, even when you do not have a dime to your name. And who is first in line to get your money? The credit card companies. They do not care if you are sick. They demand your money—with interest.

My amendments would give those facing illness a real second chance. One amendment says, if you are sick, you do not have to lose your home. It says that if illness forces you into bankruptcy, at least $150,000 of equity that you have built up in your home is yours—no matter what. Fat cats who go into bankruptcy do not lose their mansions. They can build palaces in Florida and Texas, and the bankruptcy courts cannot touch them. So my amendment says, if you get sick, you should at least get some protection for your home, too.

My other amendment says that if your medical bills force you into bankruptcy and they exceed 25 percent of your income, you are not subject to this bill's harsh provisions. You are not penalized under its so-called means test, which would require you to keep paying down on your bills even when you cannot afford it.

Let's give our fellow Americans a chance. They will do their part to rebuild their lives. We should help them, not hurt them.

I urge my colleagues to support these amendments.

I withhold the remainder of my time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. There is 1 minute 11 seconds.

Mr. KENNEDY. How much time is there for the other side?

The PRESIDING OFFICER. Five minutes 30 seconds.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the time of the quorum call be charged to the other side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 32

Mr. SESSIONS. Mr. President, how much time is left on this side?

The PRESIDING OFFICER. There is 2 minutes 38 seconds.

Mr. SESSIONS. I would like to comment on Senator CORZINE's amendment No. 32 to exempt ''economically distressed caregivers'' from the means test. I remind all of my colleagues that people who are economically distressed and have incomes below the median income already will be exempt from the means test. Secondly, I point out that page 10 of the bill is explicit that expenses people incur for the care and support of an elderly, chronically ill or disabled member of their household or family is subtracted from their income, even if they have very high income. This means that the bankruptcy bill we have drafted will still allow people who take care of their sick and aging family members to file for bankruptcy under chapter 7, the chapter that allows you to completely wipe out all your debts.

Let me read directly from page 10 of the statute. In other words, the amendment is covered by the legislation. It came up in committee. We talked about it, and it was adopted. When we talk about monthly expenses, you are trying to determine if your income level exceeds median income level and whether you can afford to pay anything back if you owe some of your debts and you have a higher income. So it reads:

> In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household member or member of debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay such reasonable and necessary expenses.

So we have dealt with that. We tried to consider these things and be reasonable as we calculated this. There was a concern expressed in committee that people might not be able to pay back any of the money because they have debts as a caregiver. That is taken care of already in the statute.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield my remaining time to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. May I inquire how much time is available?

The PRESIDING OFFICER. There is 58 seconds available.

Mr. CORZINE. Let me start by saying, I don't understand why we are trying to solve a problem on large swathes of our society in the case of the economically distressed caregivers—there were 44.125 million in bankruptcy last year—why we think 5 percent of the population or 10 percent of the population, of those that are using the bankruptcy laws need to have a whole adjustment in how we approach putting people into bankruptcy to take

care of a small percentage of individuals, when in fact including the consideration of deductions of expenses that would go under chapter 13, why we don't want to encourage families to take care of their individuals. I hope my colleagues will support the Corzine amendment which takes care of economically distressed caregivers.

AMENDMENT NO. 28

The PRESIDING OFFICER. The question is on agreeing to amendment No. 28.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Pennsylvania (Mr. SANTORUM).

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. DODD) and the Senator from Hawaii (Mr. INOUYE) are neccessarily absent.

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

The result was announced—yeas 39, nays 58, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—39

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

NAYS—58

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

NOT VOTING—3

Dodd	Inouye	Santorum

The amendment (No. 28) was rejected.

VISIT TO THE SENATE BY MEMBERS OF THE COMMITTEE ON AGRICULTURE OF THE CANADIAN GOVERNMENT

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I ask unanimous consent that I be allowed to introduce Members of the Parliament from Canada and that we proceed as in morning business for those introductions.

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

Mr. BURNS. Mr. President, I present the Honorable David Tkachuk, Senator Joyce Fairbairn, and Senator Lan Gustafson, who are Members of the Senate in Canada and members of the Senate Agricultural Committee. Welcome.

(Applause.)

Mr. BURNS. I yield the floor.

AMENDMENT NO. 29

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on Kennedy amendment No. 29.

The majority leader is recognized.

Mr. FRIST. Mr. President, I ask unanimous consent that the remaining votes of this sequence be limited to 10 minutes each.

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

Mr. FRIST. Mr. President, for the information of our colleagues, we do have two more votes. I cannot yet announce about votes later tonight, but we will do it shortly after the second vote. We would like to continue business, but as soon as we finish that second vote we will be making an announcement as to the future plans tonight. There are two stacked votes.

Tomorrow morning, in all likelihood, we will have debate, and then late in the morning we will have some stacked votes as well. Again, I will say more about that tonight.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in this bankruptcy bill, in several States there are the protections for homesteads of multimillion dollar homes. All this amendment says is that if one has severe medical problems that are going to drive one into bankruptcy, they will be able to have a protection for up to $150,000 in home equity. We know that approximately 50 percent of the total bankruptcies are medically related, and what we are saying is that in those cases where we have the high costs of health care, because of cancer or the sickness of a child, we will carve out a homestead for $150,000 and protect that homestead. That is what this amendment does. We have the protections for much larger homesteads in a number of States. Let us protect our families.

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

Mr. SESSIONS. Mr. President, there is a great deal of misinformation out about the impact of health care expenses on bankruptcy. Let me just say what the Department of Justice, U.S. Trustee Program, has found by examining 5,000 petitions, where you state exactly what the debts are, that 54 percent of the bankruptcies do not mention health care at all. They say, of the ones that mention health care, only 10 percent show it over $5,000. And of the total debts shown on those forms, only 5 percent represent health care debts. That is No. 1.

No. 2, this bill absolutely protects people and allows them to bankrupt and wipe out their medical debts. If you are below median income, all of it is wiped out. If you are above median income, you may have to pay back some of it. But I say, why should you not pay your hospital if you can? I ask that we vote no.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Pennsylvania (Mr. SANTORUM).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The result was announced—yeas 39, nays 58, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—39

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

NAYS—58

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

NOT VOTING—3

Biden	Inouye	Santorum

The amendment (No. 29) was rejected.

Mr. BOND. I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 32

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on the Corzine amendment numbered 32.

Who yields time?

Mr. SESSIONS. Mr. President, this is an amendment that is unjustified, incredibly unjustified. It basically says if you take off one month from work to

take care of a family member in need, you can never be put in chapter 13 and pay back some of your debts, even if your income is $500,000 a year.

I think Senator LEAHY offered the amendment in committee. On page 10 it says:

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children and grandchildren of the debtor, the dependents of the debtor, the spouse . . .

And so forth. It is provided for in the bill. This amendment will give an absolute exemption no matter what the person's income is. It absolutely should be voted down.

Mr. CORZINE. This amendment deals with the economically distressed caregivers. There are 44 million of those in America. Mr. President, $257 billion is saved each year by family caregiving. If we value families, we ought to protect them under the harsh changes we are implementing here. I hope people will say we want to reward that. There are 125,000 bankruptcies a year from distressed caregiving. This is one where family values and all of the things that people claim they care about are represented. This ought to be carved out from the bankruptcy reform. I hope my colleagues will support this.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. FRIST. Mr. President, for the information of our colleagues, this will be the last rollcall vote tonight. We will continue debate tonight on amendments. We will plan on stacking votes on those amendments—not first thing in the morning but late morning or very early afternoon.

Mr. REID. Mr. President, I hope people on our side, if they have amendments to offer, will offer the amendments tonight. If they are bankruptcy-related amendments, we would like to have them tonight.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Pennsylvania (Mr. SANTORUM).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The result was announced—yeas 37, nays 60, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—37

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

NAYS—60

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

NOT VOTING—3

Biden	Inouye	Santorum

The amendment (No. 32) was rejected.

AMENDMENT NO. 24

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent to set aside the pending amendments and call up my amendment No. 24.

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

The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER], for himself and Mr. LEAHY, proposes an amendment numbered 24.

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

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

The amendment is as follows:

(Purpose: To amend the wage priority provision and to amend the payment of insurance benefits to retirees)

Beginning on page 498, strike line 20 and all that follows through page 499, line 2, and insert the following:

SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended—

(1) in paragraph (4)—

(A) by striking ''within 90 days''; and

(B) by striking ''but only to the extent'' and all that follows through'' each individual or corporation'' and inserting ''but only to the extent of $15,000 for each individual or corporation''; and

(2) in paragraph (5)(B)(i), by striking ''multiplied by'' and all that follows through ''; less'' and inserting ''multiplied by $15,000; less''.

SEC. 1401A. PAYMENT OF INSURANCE BENEFITS OF RETIREES.

(a) IN GENERAL.—Section 1114(j) of title 11, United States Code, is amended to read as follows:

''(j)(1) No claim for retiree benefits shall be limited by section 502(b)(7).

''(2)(A) Each retiree whose benefits are modified pursuant to subsection (e)(l) or (g) shall have a claim in an amount equal to the value of the benefits lost as a result of such modification. Such claim shall be reduced by the amount paid by the debtor under subparagraph (B).

''(B)(i) In accordance with section 1129(a)(13)(B), the debtor shall pay the retiree with a claim under subparagraph (A) an amount equal to the cost of 18 months of premiums on behalf of the retiree and the dependents of the retiree under section 602(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1162(3)), which amount shall not exceed the amount of the claim under subparagraph (A).

''(ii) If a retiree under clause (i) is not eligible for continuation coverage (as defined in section 602 of the Employee Retirement Income Security Act of 1974), the Secretary of Labor shall determine the amount to be paid by the debtor to the retiree based on the 18-month cost of a comparable health insurance plan.

''(C) Any amount of the claim under subparagraph (A) that is not paid under subparagraph (B) shall be a general unsecured claim.'' .

(b) CONFIRMATION OF PLAN.—Section 1129(a)(13) of title 11, United States Code, is amended to read as follows:

''(13) The plan provides—

''(A) for the continuation after its effective date of the payment of all retiree benefits (as defined in section 1114), at the level established pursuant to subsection (e)(I) or (g) of section 1114, at any time before the confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits; and

''(B) that the holder of a claim under section 1114(j)(2)(A) shall receive from the debtor, on the effective date of the plan, cash equal to the amount calculated under section 1114(j)(2) (B).''.

(c) RULEMAKING.—The Secretary of Labor shall promulgate rules and regulations to carry out the amendments made by this section.

Mr. ROCKEFELLER. Mr. President, over the last years, as the economy came down from the highs of the 1990s, we have seen devastating corporate bankruptcies and how they can affect workers and their families. I have seen that in my State, and we have all seen that in our States. From the enormous Enron bankruptcy at the end of 2001 to the bankruptcies in my State, Ohio, and Pennsylvania, of Wheeling-Pitt, Weirton Steel, Horizon Natural Resources, and involving also Kentucky, every bankruptcy has brought heartache for workers who had dedicated themselves to employers, many of them for many years.

In many cases, employees and retirees have very limited ability under bankruptcy to recover their wages, to recover their severance or any benefits they are due when companies seek protection from their creditors. Workers deserve better. And as we debate changes to our Nation's bankruptcy laws, Congress must address, in this Senator's judgment, these injustices.

Today I am offering an amendment to strengthen the rights of workers and retirees in bankruptcy. I am very

pleased that Senator LEAHY, the distinguished ranking Democrat on the Senate Judiciary Committee, is an original cosponsor of this amendment.

I ask unanimous consent to add Senators DAYTON and OBAMA as cosponsors.

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

Mr. ROCKEFELLER. Specifically, the amendment will do two things. First, it would allow employees to recover more of the back pay or other compensation that is owed to them at the time of the bankruptcy.

Second, it will ensure that retirees whose promised health insurance is taken away receive at least some compensation for their lost benefits.

In the simplest terms, employees sell their labor to companies. They toil away in offices and plants and factories and mills and mines because they are promised that at the end of the day they will receive a certain compensation. Many workers then have a difficult time recovering what is owed to them by their employer when their company, as so often happens these days, files for bankruptcy.

Under current law, employees are entitled to a priority claim of up to $4,925. That is it. The legislation we are debating would increase that claim to $10,000, which is better. But even that figure is usually not enough to cover the back wages, vacation time, severance pay, or payment benefits the employees are owed for work done prior to the bankruptcy. Congress needs to update the amount of the priority claim to ensure that more workers are able to receive what is rightfully theirs. My amendment, thereby, would increase the priority claim to $15,000. So we are basically going from $5,000 to $15,000.

My amendment would also eliminate the accrual time period for calculation of priority claims. In too many cases, employees are not able to receive the full amount of the priority claim because the bankruptcy courts have interpreted the accrual period very strictly. Judges do not agree that promised severance pay for accrued vacation time was all earned in the last 90 or 100 days before bankruptcy, even when it might have been. Because there is no uniformity in the way these benefits are earned or paid, the location of the bankruptcy changes the way the wage priority operates and results in costly and time-consuming legislation, litigation over the accrual of benefits. Eliminating the accrual time period streamlines the application of the wage priority and allows employees to recover more of what they have earned.

Another important type of compensation that workers earn is the right to enjoy certain benefits when they retire. Pensions, life insurance, or health care coverage are earned by workers—it is part of the deal—in addition to their weekly paychecks. They have reason to expect these things will be coming to them. We know the nature of the American economy is changing. I do not argue that. Yet sadly we have seen many companies in the past few years abandon the promises they made when they declared bankruptcy.

Sometimes bankruptcy is used as a reason to avoid promises that were made. More and more we see companies taking the easy road by abandoning commitments they made to workers. For retirees who have planned for their golden years based upon the benefits they have earned, losing health insurance could be a devastating blow. That is sort of one of the more obvious statements one can make. Retirees must have the right to reasonable compensation if the company seeks to break its promise to provide health insurance.

Under current law, these retirees receive what is called a general unsecured claim for the value of the benefits they lost. As any creditor will tell you, a general unsecured claim is essentially worthless in most bankruptcies. It means you are at the end of the line and there are not enough assets to go around. This law allows companies to essentially rescind compensation that retirees have earned with virtually no cost to the company. Of course, that is a great deal for the company, but it is spectacularly unfair to the retirees.

Recognizing that so-called legacy costs are often an impossible burden for a company that is trying to emerge from bankruptcy, my amendment would still allow companies in some circumstances to alter the health coverage offered to retirees. However, it would require that the company pay at least some minimum level of compensation to retirees.

Under my proposal, each retiree would be entitled to a payment equal to the cost of purchasing comparable health insurance for a period of 18 months. I will repeat that. Each retiree would be entitled to a payment equal to the cost of purchasing comparable health insurance for a period of 18 months. Of course, 18 months of health insurance coverage is a lot less than many of these retirees are losing, but it can ease the transition as retirees try to make alternative plans, and it will discourage companies from thinking that terminating retiree health coverage is an easy solution or perhaps even part of the reason for seeking bankruptcy in the first place. The retirees would still be entitled to a general unsecured claim for the value of the benefits lost in excess of this one-time payment. This change would ensure that retirees, while still not being made whole on lost benefits, will at least receive some compensation for broken promises.

Mr. President, I understand that many creditors or investors are not able to recover what is rightfully owed to them in the course of bankruptcy, but employees deserve protection that recognizes the unique nature of their dependence on the employer. Any smart investor diversifies his or her portfolio so that a bankruptcy at one company does not bankrupt the investor. Likewise, suppliers and creditors that do business with a company typically have many other clients. That is not the case, however, with workers. They cannot diversify away the risk of working for a bankrupt company. They are there all by themselves, and the financial hardship bankruptcy brings is more devastating to the average worker than the average creditor or supplier. I believe that logic is pretty clear.

The relief provided by this amendment is modest. It will not take the sting out of bankruptcy. By definition, a bankruptcy is a failure, and it is painful for the company's employees, retirees, and also for the business partners. But by this amendment we would make progress toward ensuring that bankruptcies are more fair—more fair to workers who gave their time, energy, and sweat to the company in exchange for certain promised compensation, which then did not turn out to be available.

I encourage my colleagues to support this amendment.

Mr. JOHNSON. Mr. President, I rise to discuss my opposition to the Durbin amendment to S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

I have tremendous respect for my colleague from Illinois, and believe he has only the best of intentions with this amendment, which would exempt members of the armed forces from the means testing required under the bill before us.

I have the most profound respect for our servicemen and women, and for our Nation's veterans. Many of you know that my oldest son Brooks is a member of the Armed Forces, and saw active duty in Iraq with the 101st Airborne. But with all due respect, I believe this amendment could in fact harm America's soldiers.

Two years ago, we spent a great deal of time reauthorizing the Fair Credit Reporting Act, the statute governing our Nation's credit granting system. This system is the finest in the world and has essentially opened up access to credit to working Americans throughout this country, regardless of race, gender, marital status, physical location, medical condition, or profession. If someone has the ability to pay, then the credit system allows underwriters to grant credit to that individual without bias.

S. 256 is carefully crafted so we don't reintroduce possible bias into this system. It would be unacceptable to undo the system which has opened doors of opportunity to millions of Americans who in the past who had experienced bias in the lending process.

Under Senator DURBIN's amendment, military personnel filing for bankruptcy would be exempt from the means test and would automatically

qualify for a Chapter 7 filing, regardless of whether that person has the ability to repay part of his or her debt.

If this amendment were to pass, potential creditors would have a legitimate concern that loans to military personnel could require different underwriting standards. This could well mean higher interest rates for our soldiers and veterans. Even more disturbing, this would introduce bias into the system against soldiers and veterans—a perverse result and clearly not what this amendment envisions.

The Senator from Illinois raises a concern that none of us should turn our backs on: and that is whether our servicemen and women are fairly compensated, and whether they have the resources they need, particularly during deployment, to take care of their families. I call on the Congress to look carefully at this issue, and to make sure we are doing right by our military personnel and veterans.

But I urge you not to remedy any possible injustices through the bankruptcy courts.

Bankruptcy represents a longstanding commitment in this country to helping people get a fresh start. This principle has never been giving only certain people a fresh start: for example, only if you are a teacher, or a doctor or a soldier. If we started down that road, I'm not sure what would happen to most members of Congress, who tend to be lawyers.

The point is, this safety net should be available when a person truly cannot make good on his or her commitments, no matter who he or she is or what she does for a living.

No matter how noble the individual, no matter how compelling the story behind the economic need, the bankruptcy system must treat people equally and fairly.

This bill establishes a simple means test, which will affect approximately 10 percent of current filers. All it says is, after we've backed out all your current expenses, including your your house payment, your car payment, your child care costs, your education costs, your utility costs, your medical costs, and a whole host of other items, if after backing out all these payments you have the ability to pay back some of your loans, then you should. That's only right. That's only fair. And it shouldn't matter what your profession is.

Americans are an honorable people, and we work hard and play by the rules. If you can pay your debts, you should.

I am also troubled about the message this amendment sends about chapter 13 filings.

The implication is, do anything you can to avoid a repayment plan. The fact is, under the mechanism set forth in this bill, we have an unprecedented opportunity to help debtors rehabilitate their credit rating faster under a chapter 13 proceeding.

I will be working to encourage bankruptcy trustees to report on-time payments under a chapter 13 payment plan to the three major credit bureaus, so that debtors who get back on track will, quite literally, get credit for that discipline.

I also pledge to work with the creditor community to help them understand how these new payment reports might help them evaluate a chapter 13 debtor.

An amendment that automatically steers debtors to chapter 7 is misguided and would give no thought to the potential benefits of a chapter 13 filing.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. DEMINT. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

DISCHARGE PETITION—S.J. RES. 4

Mr. CONRAD. Mr. President, today pursuant to 5 U.S.C. 802(c), I have submitted a petition to discharge the Senate Committee on Agriculture, Nutrition, and Forestry from consideration of S.J. Res. 4, a joint resolution providing for congressional disapproval of the rule relating to risk zones for introduction of bovine spongiform encephalopathy, submitted by the Department of Agriculture under chapter 8 of title 5, United States Code, the Congressional Review Act.

DISCHARGE PETITION

We, the undersigned Senators, in accordance with chapter 8 of title 5, United States Code, hereby direct that the Senate Committee on Agriculture, Nutrition, and Forestry be discharged from further consideration of S.J. Res. 4, a resolution providing for congressional disapproval of the rule submitted by the Department of Agriculture relating to risk zones for the introduction of bovine spongiform encephalopathy, and further, that the resolution be placed upon the Legislative Calendar under General Orders.

Kent Conrad, Craig Thomas, Byron Dorgan, Ken Salazar, Harry Reid, Max Baucus, Jay Rockefeller, John Kerry, Conrad Burns, Tim Johnson, Dianne Feinstein, Jeff Bingaman, Barbara Boxer, Dick Durbin, Ron Wyden, Barack Obama, Chuck Schumer, Paul Sarbanes, Carl Levin, Hillary Clinton, Ted Kennedy, Jack Reed, Patrick Leahy, Tom Harkin, Mark Dayton, Russell Feingold, Barbara Mikulski, James Jeffords, Herb Kohl, Jon Corzine, Chris Dodd, E. Benjamin Nelson, Mary L. Landrieu.

HONORING OUR ARMED FORCES

SPECIALIST DAKOTAH L. GOODING

Mr. GRASSLEY. Mr. President, I speak today in remembrance of an Iowa soldier who has fallen in service to his country. Specialist Dakotah L. Gooding, a member of the C Troop, 5th Squadron, 7th Cavalry Regiment, 3rd Infantry Division, died on the 13th of February in Balad, Iraq when his vehicle overturned into a canal. He was 21 years old.

SPC Gooding grew up in Keokuk, IA and eventually moved to the Des Moines area. He attended the Scavo Alternative School and Lincoln High School. In the fall of 2000, at the age of 17, Dakotah fulfilled a life-long dream of joining the U.S. Army, following in the footsteps of many family members. He had served in the United States and Korea before going to Iraq. SPC Gooding came to Iraq as part of an Army Special Security Force that helped with voter protection in the recent historic democratic elections.

A cousin mentioned that SPC Gooding knew he had a mission to protect those around the world and those at home. SPC Gooding's mission was a noble one, and he carried it out with the courage and dignity that are so characteristic of our American soldiers. For his dedication and sacrifice, Dakotah deserves our respect and admiration. For family and friends who have felt this loss most deeply, I offer my sincere sympathy. My prayers go out to his wife, Angela, his mother, Judith, his two sisters, and his many other family and friends.

May we always remember with pride and appreciation Specialist Dakotah L. Gooding and all those Americans who have gone before him in service to their country.

FOREIGN OPERATIONS APPROPRIATIONS

WORLD COMPASSION

Mr. INHOFE. Mr. President, I know my friend from Kentucky played the key role III conference negotiations on H.R. 4818, the FY 2005 foreign operations appropriations bill, which were completed last year, and I ask if he is aware of language that was contained in the House report regarding World Compassion's activities in Afghanistan.

Mr. MCCONNELL. My staff informs me that the House report encouraged the State Department to review a proposal from this organization.

Mr. INHOFE. My colleagues should know that as a supporter of this group, I continue to encourage the State Department to consider a proposal from World Compassion. This organization's ''Shelter, Support, and Skills Training for Afghan Refugee and Displaced Widows and Orphans'' Program is an integrated plan that addresses the special needs of widows and their children, many of whom are refugees and internally displaced persons. The program provides shelter, access to clean water,