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

EXTENSION OF MORNING BUSINESS

Mr. FEINGOLD. Mr. President, I ask unanimous consent that morning business be extended for 5 minutes.

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

HONORING RON DAYNE

Mr. FEINGOLD. Mr. President, I am on the floor today principally to continue to battle for our Wisconsin dairy industry and Wisconsin dairy farmers. As I was here today, I had a chance to reflect on something else about Wisconsin that we will be bragging about today. I come here as a proud alumnus of the University of Wisconsin-Madison. Of course, I am talking about the new career rushing record in college football just set by one of the greatest Badgers of all time, Ron Dayne.

Ron Dayne rushed his way into football glory on Saturday. After rushing for an incredible 6,181 yards in his career, he needed only 99 yards to break the record set last year by Texas's Ricky Williams.

Short runs throughout the first half brought him within yards of the record and helped his team build an early lead. Then, with 5 minutes left in the second quarter, he broke the record on a 31-yard sprint and went on to rush a total of 216 yards to help catapult the Badgers—with my apologies to my colleagues from the Hawkeye State—to a crushing 41–3 victory against Iowa.

I quote from Matt Bowen, a leading tackler for the University of Iowa, on the difficulty of stopping University of Wisconsin running back Ron Dayne. Matt said: ''It's like trying to catch a couch as it tumbles down a few flights of stairs.''

With this achievement, Ron Dayne has rushed his way into the front of a pack of Heisman hopefuls, and he has helped guarantee his team another trip to Pasadena on New Year's day as the undisputed champions of the Big 10. Through it all, Ron Dayne has been a model person as well as a model team player, exhibiting a modesty and dedication that make him a Badger hero for the ages.

On Saturday, as jubilant Badger football fans waved their souvenir Dayne towels in the air at Camp Randall Stadium and chanted Ron Dayne's name, they celebrated a great victory for Wisconsin, and above all they celebrated a player who does honor to his school, to himself, and to the game he has taken to a new level of excellence.

The Great Dayne, as we all him in Wisconsin, finishes his regular season career with a phenomenal record of 6,397 rushing yards. He has secured himself a lofty place in the history of college football, and a permanent place in the hearts of every Wisconsin Badger fan. As Ron Dayne said about his incredible run into the record books, ''It's kind of sinking in now. This is the best.''

As a Wisconsinite and a dedicated Badger fan, I can tell you that it truly is the best, and that Ron Dayne, the best all-time rusher in college football, is a true Badger hero.

Mr. President, On Wisconsin!

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

BANKRUPTCY REFORM ACT OF 1999

The PRESIDING OFFICER. The Senate will now resume consideration of S. 625, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 625) to amend title 11, United States Code, and for other purposes.

Pending:

Feingold amendment No. 2522, to provide for the expenses of long term care.

Hatch/Torricelli amendment No. 1729, to provide for domestic support obligations.

Leahy amendment No. 2529, to save United States taxpayers $24,000,000 by eliminating the blanket mandate relating to the filing of tax returns.

Wellstone amendment No. 2537, to disallow claims of certain insured depository institutions.

Wellstone amendment No. 2538, with respect to the disallowance of certain claims and to prohibit certain coercive debt collection practices.

Feinstein amendment No. 1696, to limit the amount of credit extended under an open end consumer credit plan to persons under the age of 21.

Feinstein amendment No. 2755, to discourage indiscriminate extensions of credit and resulting consumer insolvency.

Schumer/Durbin amendment No. 2759, with respect to national standards and homeowner home maintenance costs.

Schumer/Durbin amendment No. 2762, to modify the means test relating to safe harbor provisions.

Schumer amendment No. 2763, to ensure that debts incurred as a result of clinic violence are nondischargeable.

Schumer amendment No. 2764, to provide for greater accuracy in certain means testing.

Schumer amendment No. 2765, to include certain dislocated workers' expenses in the debtor's monthly expenses.

Dodd amendment No. 2531, to protect certain education savings.

Dodd amendment No. 2753, to amend the Truth in Lending Act to provide for enhanced information regarding credit card balance payment terms and conditions, and to provide for enhanced reporting of credit card solicitations to the Board of Governors of the Federal Reserve System and to Congress.

Hatch/Dodd/Gregg amendment No. 2536, to protect certain education savings.

Feingold amendment No. 2748, to provide for an exception to a limitation on an automatic stay under section 362(b) of title 11, United States Code, relating to evictions and similar proceedings to provide for the payment of rent that becomes due after the petition of a debtor is filed.

Schumer/Santorum amendment No. 2761, to improve disclosure of the annual percentage rate for purchases applicable to credit card accounts.

Durbin amendment No. 2659, to modify certain provisions relating to pre-bankruptcy financial counseling.

Durbin amendment No. 2661, to establish parameters for presuming that the filing of a case under chapter 7 of title 11, United States Code, does not constitute an abuse of that chapter.

Torricelli amendment No. 2655, to provide for enhanced consumer credit protection.

Wellstone amendment No. 2752, to impose a moratorium on large agribusiness mergers and to establish a commission to review large agriculture mergers, concentration, and market power.

AMENDMENT NO. 2663

(Purpose: To make improvements to the bill)

Mr. MOYNIHAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New York [Mr. MOYNIHAN] proposes an amendment numbered 2663.

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

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

The amendment is as follows:

On page 107, line 7, strike ''(C)(i) for purposes of subparagraph (A)—'' and insert the following:

''(C) for purposes of subparagraph (A)—

''(i) if the debtor, and the spouse of the debtor in a joint case, as of the date of the order for relief, have a total current monthly income greater than the national or applicable State median family monthly income calculated on a monthly basis for a family of equal size, or in the case of a household of one person, the national median household income for one earner (except that for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals, plus $583 for each additional member of that household)—''.

On page 107, lines 8 and 14, move the margins 2 ems to the right.

On page 107, line 19, strike ''and'' and all that follows through line 20 and insert the following:

''(ii) if the debtor and the debtor's spouse combined, as of the date of the order for relief, have a total current monthly income that does not satisfy the conditions of clause (i)—

''(I) consumer debts owed to a single creditor and aggregating more than $1,075 for luxury goods or services incurred by an individual debtor on or within 60 days before the order for relief under this title are presumed to be nondischargeable; and

''(II) cash advances aggregating more than $1,075 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title are presumed to be nondischargeable; and

''(iii) for purposes of this subparagraph—''.

On page 111, line 20, strike ''(14A)(A) incurred to pay a debt that is'' and insert the following:

''(14A) if the debtor, and the spouse of the debtor in a joint case, as of the date of the order for relief, have a total current monthly income greater than the national or applicable State median family monthly income, calculated on a monthly basis for a family of equal size, or in the case of a household of one person, the national median household income for one earner (except that for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals, plus $583 for each additional member of that household)—

''(A) incurred to pay a debt that is''.

On page 112, line 2, insert '', with respect to debtors with income above the amount stated,'' after ''that''.

Mr. MOYNIHAN. Mr. President, the amendment is a small matter in the larger context of the legislation we are dealing with, but a very large matter to the people we are talking about who are low-income debtors. This addresses two aspects of the bill that have disproportionate negative impacts on low-income debtors.

The first aspect concerns consumer debt and cash advances. The second relates to debt incurred to pay nondischargeable debt. By nondischargeable debt, we mean the debt a consumer has to repay even if they declare bankruptcy. There are very commonsense provisions in our bankruptcy laws that say if you acquire a large debt in a short period before declaring bankruptcy, there is some presumption that you knew where you were heading and you were taking advantage of the bankruptcy laws.

Under current law, consumer debts owed to a single creditor—excluding ''goods or services reasonably necessary''—of more than $1,075 obtained within 60 days of bankruptcy and cash advances of more than $1,075 obtained within 60 days of bankruptcy are presumed to be fraudulent and thus nondischargeable.

S. 625 seeks to expand the circumstances under which such transactions would be considered fraudulent in two ways: First, by lowering the threshold amount that would trigger the fraudulent presumption to $250 for consumer debts and $750 for cash advances; and, second, by increasing the number of days prior to bankruptcy during which debt incurred and cash advances obtained would be presumed fraudulent—to 90 days for consumer debts and to 70 days for cash advances.

Under this amendment, the new threshold amounts of money and numbers of days proposed in S. 625 would apply to debtors whose total monthly income is greater than the median monthly income, but they would not apply to low-income debtors. Low-income debtors do not have much money and, at times, need to charge certain items or to take a cash advance to buy necessary goods, such as clothing. It is wrong—or so I believe—to assume these people acted fraudulently. They acted of necessity—or I believe that is a fair assumption. They did what they needed to do to get by. The thresholds as they exist under current law would continue to apply to median and below-median income families.

I will make the point that we are, by this amendment, not changing current law. We are not introducing a novel concept into bankruptcy proceedings. We are providing for low-income persons to continue to have the same presumptions in their favor, or against them, that we have lived with for many years, with fair success, as I understand it.

S. 625 adds a new exception to discharge for debt incurred to pay nondischargeable debt and creates a presumption of nondischargeability for debts incurred to pay such debt within 70 days of filing the bankruptcy petition. This amendment would retain the current state of the law as to debt incurred to pay nondischargeable debt for median and below-median income families.

I do believe this is a worthy amendment. I commend it to my colleagues. I have had the opportunity to have worked through this, and I express my own gratitude that in many years distant past I did not decide to become a bankruptcy lawyer. That would have been a complexity beyond my capacity.

Mr. President, I thank the Chair for his courtesy and the Senate for its equal attention. I commend this matter. I think it is something we would be wise to do. The essence of the proposal is: For low-income debtors, don't change the rules. They are not the problem. Don't create problems for them.

A well-documented and prevalent form of abuse by some creditors is the filing of unfounded complaints alleging that debtors committed fraud, or the use of the threat of such a complaint, to coerce debtors into giving up valuable bankruptcy rights, typically by agreeing that all or part of the debt is not discharged.

Such threats are especially potent against low-income debtors. That is why the safe harbor in my amendment is necessary. These debtors often do not have lawyers, and they certainly do not have the funds to pay hundreds or even thousands of dollars to defend against creditor litigation. When a creditor threatens to or actually files a complaint alleging fraud, the debtor has to choose either to pay to defend against the complaint (requiring a lump sum payment to an attorney of at least several hundred dollars and usually more) or to make a deal with the creditor (who will offer to take a reaffirmation or settlement with ''low monthly payments'' of perhaps $50). Most cash-strapped debtors will take the ''low monthly payment'' option, often the only thing they can afford, regardless of whether the creditor has a good case.

This scenario is played out already, in the area of dischargeability litigation. Several courts have found practices of creditors filing ''fraud'' dischargeability cases, for which there is no factual basis, simply to coerce reaffirmations, and actually dropping those cases when they are defended. Most of these cases are in fact settled through reaffirmations, because the debtors have no choice but to take the ''low monthly payment'' option.

The new presumptions of fraud proposed in S. 625, against debtors who have charged as little as $250 on a credit card, and under the amorphous standard that a debt was incurred to pay another debt, will embolden creditors to file many more of these complaints. My amendment to S. 625 addresses these presumptions. I will explain how.

First, under current law, consumer debts owed to a single creditor (excluding ''goods or services reasonably necessary'') of more than $1,075 obtained within 60 days of bankruptcy and cash advances of more than $1,075 obtained within 60 days of bankruptcy are presumed to be fraudulent, and thus nondischargeable. S. 625 seeks to expand the circumstances under which such transactions would be considered fraudulent in two ways: first, by lowering the threshold amount that would trigger the fraud presumption to $250 for consumer debts and to $750 for cash advances; and, second, by increasing the number of days prior to bankruptcy during which debt incurred and cash advances obtained would be presumed fraudulent (to 90 days for consumer debts and to 70 days for cash advances).

Under my proposed amendment, the threshold amounts of money and numbers of days triggering a presumption of fraud in S. 625 would only apply to debtors whose total monthly income is greater than the median monthly income, while the current thresholds would continue to apply to median and below-median income families.

Second, S. 625 adds a new exception to discharge for debt—a loan or credit card debt—incurred to pay nondischargeable debt with the intent to discharge such debt in bankruptcy; it also creates a presumption of nondischargeability for debts incurred to pay nondischargeable debt within 70 days prior to filing the bankruptcy petition. My proposed amendment would retain the current state of the law as to debt incurred to pay nondischargeable debt for median and below-median income families.

Nothing in the amendment would prevent a creditor with evidence of fraud from pursuing a case against a low-income debtor. However, the creditor would not be entitled to the benefit of a presumption to make its case. And low-income debtors would not be forced to spend money they don't have to defend against an expanded presumption of their dishonesty.

The filing of abusive dischargeability complaints is not a new phenomenon in bankruptcy law. It was the subject of legislation when the Bankruptcy Code

was first passed in 1978. At that time, a strong attorney's fee provision was added to the Code to deter such creditor tactics. The House Judiciary Committee report (95–595, p.131) found the problem prevalent at that time:

> The threat of litigation over this exception to discharge and its attendant costs are often enough to induce the debtor to settle for a reduced sum, in order to avoid the costs of litigation. Thus, creditors with marginal cases are usually able to have at least part of their claim excepted from discharge (or reaffirmed), even though the merits of the case are weak.

Unfortunately, in 1984 Congress weakened the attorney's fees provision and added, for the first time, a presumption of fraud based on purchases in the period immediately before bankruptcy. Then the concerns of the House Judiciary Committee proved prescient. Creditors began filing fraud complaints in large numbers, and courts have found that most debtors settle those complaints, regardless of how weak they are, rather than incur the expense of litigation.

The amendment before us is a very modest one. It does not return to the law the strong attorney's fee provision enacted in 1978. It does not eliminate the presumptions of fraud that were added in 1984 and made more expansive in 1994. It does not even completely eliminate the additional presumptions of fraud added by this bill, or the new exceptions to discharge. The only thing my amendment does is to make these new presumptions of fraud inapplicable to families below median income—those who would have the most difficulty affording a defense against unfounded fraud complaints.

The amendment will not shelter anyone who commits fraud. The current fraud provisions of the Bankruptcy Code will continue to apply to them. Those provisions already clearly deem fraudulent any debt that is incurred with no intent to pay it or with an intent to discharge it in bankruptcy. My amendment merely requires that a creditor produce meaningful evidence to establish fraud, rather than rely on S. 625's new presumption of fraud, at least in cases filed by low-income families who are most vulnerable to, and least able to afford the expenses associated with, creditor-initiated litigation.

PRIVILEGE OF THE FLOOR

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that during the pendency of this amendment, Kathleen McGowan of my staff be allowed privileges of the floor.

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

Mr. MOYNIHAN. Mr. President, seeing no other Senators seeking recognition, 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. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that tomorrow, immediately following the Wellstone amendment, there be a vote on the Moynihan amendment, except for 4 minutes in between to be evenly divided for the proponents and the opponents of the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, it is my understanding that no amendments would be in order to the Moynihan amendment prior to the vote.

Mr. GRASSLEY. That is right.

Mr. REID. No objection.

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

Mr. GRASSLEY. Mr. President, I know the Senator from New York is very sincere about the amendment he has proposed. I know he is cognizant of a discussion on a similar subject that we had on the amendment by the Senator from Connecticut last week. I think in a good-faith effort he comes in with something that does not go quite as far as Senator DODD's amendment goes. But I still think, for the very same reasons I expressed opposition to the Dodd amendment last week, I must express opposition to the Moynihan amendment.

In addition, I think perhaps by setting up one category for people who are in bankruptcy court who are below the national average and allowing a certain behavior on their part that you don't for people above the national average of income sets up a double standard that is not justified.

I oppose this amendment for pretty much the same reasons I opposed the Dodd amendment—that Congress needs to be very careful to fight against fraud and abuse and to say no to fraud and no to this financial abuse whenever we can. It seems to me it is a standard of ethic that is justified—being against fraud and abuse and treating it the same wherever it might happen.

One type of fraud and abuse involves loading up on debt right before bankruptcy and then discharging that debt. It doesn't seem to me we need to allow that above the limits of our legislation. The bill before us now contains provisions limiting the amount of debt incurred to purchase luxury goods within 90 days of declaring bankruptcy.

Senator MOYNIHAN's amendment would let people below the median income load up on more debt than higher income people. This lets people at low income levels get away with fraud and more fraud. I think this is not a very good idea. I respectfully oppose this amendment with obvious good intentions. I have never known Senator MOYNIHAN to have anything but good intentions, but this is one amendment that could bring about very unfair results as we allow people at a lower income get away with more fraud and abuse than we would people with higher income.

I oppose the amendment and yield the floor.

Mr. REID. Mr. President, to engage my friend on the bill generally, we have been working with the ranking member of the Judiciary Committee, Senator DASCHLE's floor staff, and Senator GRASSLEY and his staff during all or parts of the day. We are in a position now where this bill can be completed in a relatively short period of time. We have worked with Members on this side of the aisle, and with the cooperation of the manager of this bill there is a tentative agreement to accept about 10 amendments that the Democrats have offered. They may want to change the amendments in some fashion. We have been able to work on a finite number of hours that would be left in those amendments, with the exception of one Senator.

In short, for notice to the other Members of the Senate, with a little bit of luck we can finish this bill relatively shortly. I hope the majority allows Members to continue to work on this bill to complete it.

Mr. GRASSLEY. Mr. President, responding to the Senator from Nevada and going back to his efforts of last Wednesday before we adjourned for the national Veterans Day holiday, I can say that on that day as well as other periods of time over the weekend, and even as late as yesterday, between his efforts working with me and the efforts of our respective staffs, I have found the Senator from Nevada very cooperative. As a result of his cooperation, what we thought was an impossible amount of amendments to work our way through to bring this bill to finality has been dramatically reduced. The Senator needs to be credited with that extra effort.

I encourage Members on my side of the aisle to reach agreement. There may be one or two items that are above my pay grade, maybe even above the pay grade of the Senator from Nevada, that will have to be decided by leadership, but except for those items, we are making tremendous progress. I want to work in that direction, and I assure the Senator from Nevada of my efforts in that direction.

Mr. REID. Mr. President, I say to my friend from Iowa, we have made great progress. Originally, the bill had about 320 amendments. We are now down to no more than 15 amendments. Of those amendments, some can be negotiated. There are some that will require votes.

As I indicated, there is only one Senator, who has two amendments, who hasn't agreed on time for those amendments. Of course, if everyone is serious about completing the bankruptcy bill, going from 320 amendments to approximately 15 amendments says it all. We should complete this bill. Significant progress has been made.

I acknowledge there are a couple of issues that will be more difficult. However, people on our side—even on those two amendments—have agreed to times. One Senator has agreed to a 30-

minute time agreement; the other Senator has agreed to a 70-minute time agreement. As contentious as these two amendments might be, we recognize we are in the minority. We are willing, in spite of our being in the minority, to agree to a time limit to let the will of this body work. We would agree to a way of disposing of those. Two Senators feel very strongly that they deserve a vote on these two amendments.

Other than those two amendments, I think we should be able to go through this bill at a relatively rapid rate. From all I have been able to determine, we are not going to be leaving here tomorrow anyway. We should try to complete this bill if at all possible. It would be a shame if cloture were attempted to be invoked on this bill, after having gone from 320 amendments to a mere handful. I think that would leave a pretty good argument on the side of the minority not to go along with cloture. We have done everything we can to be reasonable. A few Senators desire to offer amendments. They should have the right to offer those amendments.

I have appreciated the cooperation of the Senator from Iowa, the manager of this bill, and his staff. They have been very easy to work with and very understanding of what we have been trying to accomplish.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I add to what the Senator from Nevada has said about bringing this bill, hopefully, to finality within just the last few days of this session, and I remind everybody that should be possible because of the bipartisan cooperation we had in drawing up the bill that brought the Senate to this point, as well as the fact that similar legislation passed last year on a vote of 97–1, I believe.

I ask unanimous consent to lay the pending Moynihan amendment aside.

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

AMENDMENTS NOS. 2529 AND 2478, AS MODIFIED

Mr. GRASSLEY. I ask unanimous consent to modify amendments 2529 and 2478, and I send the modifications to the desk.

The PRESIDING OFFICER. The clerk will report.

The Senator from Iowa [Mr. GRASSLEY], for Mr. THURMOND, proposes an amendment No. 2478, as modified.

Mr. GRASSLEY. These amendments have been cleared by both sides. I ask unanimous consent they be agreed to en bloc and the motion to reconsider be laid upon the table.

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

The amendments (Nos. 2529 and 2478), as modified, were agreed to, as follows:

AMENDMENT NO. 2529

On page 115, line 23, strike all through page 117, line 20, and insert the following:

''(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days before the filing of the petition;

''(v) a statement of the amount of projected monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing''; and

(2) by adding at the end the following:

''(d)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who request those documents.

''(2)(A) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case.

''(B) The court shall make such plan available to the creditor who request such plan—

''(i) at a reasonable cost; and

''(ii) not later than 5 days after such request.

''(e) An individual debtor in a case under chapter 7, 11 or 13 shall file with the court at the request of any party in interest—

''(1) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order of relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and''

At the appropriate place, insert the following:

''In the case of an individual under chapter 7, the court shall not grant a discharge unless requested tax documents have been provided to the court. In the case of an individual under chapter 11 or 13, the court shall not confirm a plan of reorganization unless requested tax documents have been filed with the court.''

AMENDMENT NO. 2478

(Purpose: To provide for exclusive jurisdiction in Federal court for matters involving bankruptcy professional persons)

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

SEC. 322. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b) by striking ''Notwithstanding'' and inserting ''Except as provided in subsection (e)(2), and notwithstanding''; and

(2) amending subsection (e) to read as follows:

''(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

''(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

''(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

Mr. SPECTER. Mr. President, I seek recognition to discuss two important provisions that were added to the bankruptcy reform bill by unanimous consent. The first provides that bankruptcy attorneys who represent debtors will be liable for paying certain attorneys' fees only if their own actions are ''frivolous''—the bill had originally required these attorneys to pay fees for merely losing the argument on a motion to remove a case from Chapter 7 to Chapter 13. The second of these provisions empowers judges to waive the bankruptcy filing fee for individuals who cannot afford to pay it, even in installments. I have fought for these two provisions, together with Senator FEINGOLD, since this bill first came before the Senate Judiciary Committee last Congress, and I believe their inclusion in the bill is a significant improvement that will ensure sufficient access to justice for all who seek relief in our bankruptcy courts.

As originally drafted, the bankruptcy bill provided that if a debtor files in Chapter 7, and a bankruptcy trustee prevails on a motion to remove the debtor to Chapter 13 because the debtor is found to have the ability to pay at least 25% of his debts, then the debtor's attorney must pay the reasonable costs and attorneys' fees incurred by the trustee in filing and arguing the removal motion.

This was an inappropriate provision. We would have had attorneys being penalized not because they were bad actors, but because they engaged in zealous advocacy on behalf of clients and happened to lose the argument. This would have had an enormous chilling effect on debtors' attorneys. In all cases where the outcome was less than certain, lawyers would have been inclined to file their clients in Chapter 13, even if they truly believe that the clients belong in Chapter 7, in order to avoid the penalty.

When the bill came before the Senate Judiciary Committee last Congress, I offered an amendment together with Senator FEINGOLD to provide that the debtors' attorneys should pay these fees only if their actions in filing in Chapter 7 were ''frivolous.'' Our amendment was defeated by a roll call vote of 9–9. We then offered our amendment on the Senate floor, where it was tabled by a vote of 57–42.

As the result of our efforts last Congress, the attorneys' fees standard was improved when the bill was re-introduced this Congress. The current version of the bill provides that lawyers must pay these fees only if their actions in filing in Chapter 7 were not ''substantially justified.'' Still, I believe that this standard is too broad and will still chill attorneys from zealous advocacy. As in every other area of the law, lawyers must be punished only if their actions are ''frivolous'' or in

bad faith. I am glad that this is the standard that is now in the bill.

A second problem with the bankruptcy bill as originally drafted was that it did not permit bankruptcy judges to waive the bankruptcy filing fee for indigent individuals. Individuals who petition for Chapter 7 bankruptcy must pay a filing fee of approximately $175. There are many individuals who are so indigent by time they decide to seek the relief of bankruptcy, however, that they cannot even afford this relatively small fee. As a result, some individuals are actually too poor to go bankrupt. This is an absurd result. In such limited cases, we must empower a judge to decide that the filing fee can waived.

Many individuals opposed to waiving the filing fee have argued that doing so would open the door to an enormous increase in the number of individuals taking advantage of the bankruptcy system. The idea is that ''free'' bankruptcies will lead to a bankruptcy bonanza.

Unfortunately, these individuals have failed to look at the record. In the appropriations bill for FY '94, Congress authorized a pilot in forma pauperis program in six federal judicial districts, including Eastern District of Pennsylvania, for three years. These pilots demonstrated that the program worked as intended, and did not significantly change the number or nature of bankruptcy filings.

In the six pilot districts, waivers were requested in only 3.4% of all nonbusiness Chapter 7 cases, and waivers were granted in only 2.9% of all nonbusiness Chapter 7 cases. This number was small enough that it did not lead to a significant increase in the number of overall Chapter 7 filings or a significant loss in revenue to the courts.

When the bankruptcy bill was before the Senate Judiciary Committee last Congress, I offered an amendment to permit the waiver of filing fees together with Senator FEINGOLD. Our amendment was defeated in Committee by a vote of 9–9. When we introduced our amendment on the floor of the Senate, however, the motion to table the amendment was rejected by a vote of 47–52, and the amendment was accepted into the bill. I am glad that this Congress our waiver provision has been included without the necessity of a vote.

Taken together, these two provisions ensure that all who are in need will have access to our bankruptcy courts and will enjoy the benefits of zealous advocacy on their behalf that is the cornerstone of our legal system. They are valuable improvements, and I commend Senators GRASSLEY, LEAHY, TORRICELLI and FEINGOLD for their inclusion in the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ROBERT M. BRYANT, DEPUTY DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. THURMOND. Mr. President, the Federal Bureau of Investigation is perhaps the most renown and respected law enforcement agency in the world. Though the FBI is famous for its laboratories, embracing new crime fighting techniques, and ability to ''get its man'', the real secret and heart of this organization's success has always been its people—-the capable, courageous, and conscientious men and women who serve as Special Agents. Today, I rise to pay tribute to an individual who has given much to the FBI and the nation, Robert M. ''Bear'' Bryant, who will retire from his position as the Deputy Director of the Federal Bureau of Investigation on November 30th.

Bear Bryant's career as a Special Agent began in 1968, when he hit the foggy and mean streets of Seattle, Washington, a distinctly different environment than his native Missouri. The atmosphere in Seattle, and across the nation, was combustible and there was just the right amount of tension to spur extensive criminal and violent activities. Without question, it was a busy and dangerous time to be making one's living as a lawman, and it was in such an environment that Special Agent Bryant cut his teeth in law enforcement and made a lifelong commitment to the Bureau.

Though he certainly had no inkling as a young Special Agent that his career would take him to the most senior levels of the FBI, Robert Bryant would spend three decades criss-crossing the United States as his career moved progressively forward and up the FBI chain of command. Subsequent assignments to Dallas, Headquarters in Washington, Salt Lake City, and Kansas City, as well as promotions to Supervisor, Permanent Inspector, and Special Agent in Charge, all helped to prepare Bear for his ultimately taking the second-in-command slot in the Bureau.

Surely one of the most rewarding assignments Bear had during his career was the time he spent as Special Agent in Charge of the Washington Field Office. When he took that job in 1991, the Capital was a violent city as a result of ''crack wars'' that were breaking out in urban areas from coast to coast. As the Special Agent in Charge of the Washington Field Office, Bear Bryant was responsible for establishing the ''Bureau Safe Streets'' program, which directed significant FBI resources toward combating street-level organized crime. The success of Mr. Bryant's efforts and leadership are evident. Thanks to his efforts, in conjunction with other agencies including the Metropolitan Police, crime is down in this city today, especially those offenses associated with the crack trade. This program was so successful in the District of Columbia, it was adapted as a tactic for reducing violent crime in other cities and there are currently more than 160 taskforces in operation throughout the United States making streets safe again.

Those familiar with the FBI will tell you that service as the Special Agent in Charge of the Washington Field Office is an indication that someone is on their way to assuming one of the senior positions within the leadership of the Bureau, and in 1993, SAC Bryant was tapped for the very critical post of Assistant Director of the National Security Division. This segment of the Bureau is responsible for battling the considerable threats to national security from both outside and within the borders of the United States. During his tenure of the head of the National Security Division, Mr. Bryant was responsible for supervising and directing investigations that represented some of the most serious acts of espionage, treason, and terrorism that law enforcement has had to deal with in recent years including, the Oklahoma City bombing, the bombing of the Al-Khobar Towers in Saudi Arabia, as well as the espionage cases of Aldrich Ames, Earl Edwin Pitts, and Harold Nicholson.

Two-years-ago, Director Louis Freeh needed a new Deputy Director and given his considerable experience as an investigator, supervisor, and administrator, it came to no one's surprise that it was Bear Bryant who took the co-pilot's chair. The position of Deputy Director is one of great responsibility and importance, for it is this person who runs the day-to-day operations of the Bureau and its 28,000 agents and support personnel. In addition to assuring the smooth running of this global agency that is always on duty, Deputy Director Bryant was also tasked with drafting the Bureau's strategic plan for the next five years, a document which has been described as a ''sea change'' in FBI policy for it included a major reassessment of how resources are allocated and how the Bureau is going to do its job.

Robert ''Bear'' Bryant has had a career of impressive achievement and unflagging service. Through his work, he has taken criminals, spies, and terrorists off of our streets and put them into the prison cells where they belong, and in the process, he has helped to keep the United States and its citizens safe. After more than thirty-years since raising his right hand and taking the oath as a Special Agent, Deputy Director Bryant has decided to retire from the Federal Bureau of Investigation. We are grateful for his diligent service, and I am sure that all my colleagues would join me in wishing Mr. Bryant, his wife of 33-years, Beth, and their three children Barbara, Dan, and Matt, happiness, health, and success in all their future endeavors.