Because we were not able to vote on this amendment, I can not support limiting debate on this bill.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:44 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005—Continued

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 p.m. having arrived, the Senate will proceed to a vote on a motion to invoke cloture on S. 256. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 14, S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

Bill Frist, Arlen Specter, Chuck Grassley, Judd Gregg, Thad Cochran, R.F. Bennett, Wayne Allard, Lindsey Graham, Jeff Sessions, Trent Lott, Rick Santorum, John Warner, John Thune, Orrin Hatch, Lisa Murkowski, Mel Martinez, Sam Brownback.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant journal clerk called the roll.

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

The yeas and nays resulted—yeas 69, nays 31, as follows:

[Rollcall Vote No. 29 Leg.]

YEAS—69

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

NAYS—31

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Obama
Bingaman	Harkin	Reed
Boxer	Inouye	Reid
Cantwell	Jeffords	Rockefeller
Clinton	Kennedy	Sarbanes
Corzine	Kerry	Schumer
Dayton	Lautenberg	Wyden
Dodd	Leahy	
Dorgan	Levin	

The PRESIDING OFFICER. On this vote, the yeas are 69, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. MCCONNELL. I ask unanimous consent that Senator DOLE be recognized for up to 15 minutes as in morning business, after which Senator JACK REED of Rhode Island be recognized for up to 10 minutes as in morning business.

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

(The remarks of Mrs. DOLE and Mr. REED are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Illinois.

AMENDMENT NO. 40 WITHDRAWN

Mr. DURBIN. Mr. President, on behalf of Senator PRYOR, I ask unanimous consent amendment No. 40 be withdrawn.

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

Mr. DURBIN. Mr. President, now that we are postcloture, the number of amendments is limited, and the type of amendments will be limited. I have three pending amendments before the Senate relative to the bankruptcy bill.

For those of you who have not followed the debate on this bill, this bill will change the bankruptcy law in America. Today, many people go into bankruptcy court because they have no place to turn. They have more debt than they can possibly pay.

One of the major reasons people reach this point in life, the No. 1 reason people go to bankruptcy court is medical bills. Three-fourths of the people in bankruptcy court with medical bill problems had health insurance when they were diagnosed with their illness. If you think, I don't have to worry about bankruptcy court because I have health insurance, so do these people. What happened? They got sick. The bills started piling up. Maybe they lost their job and their health insurance and couldn't afford to pay the COBRA premium, which people have to pay once they have lost a job and health insurance. They gave up on their health insurance, and the bills started stacking up. It reached the point for these folks where they had nowhere to turn. They faced $50,000, $100,000, or $200,000 in medical bills they could never pay off for the rest of their lives. In desperation, and with some embarrassment, people then went to bankruptcy court and said: I have no place to turn. I just can't do it.

A court says: What do you owe? Give us all our assets. What do you have in checking and savings? How much is your home and your car worth? Furniture, everything—what is it all worth? Where are your debts? We will let you walk out of bankruptcy court with very little left, but your debts will be gone.

That happens to people. More often than not, medical bills drive them there.

There are other reasons. You lose your job. How many people have you met in their fifties in America—I have met many in Illinois—who had a great career and a great job and lost it, then went out looking for a comparable job only to learn they were ''too old for the market''? There they sat, taking a job that paid less, trying to maintain a family and household that was basically financed with a higher salary not that long ago. In desperation, they try to keep things together, and it starts to fall apart. The debts they incurred when they had a good job they cannot handle anymore.

What else happens to people? Some people live on the margins already. Some single mothers trying to raise kids are in a situation where finally something happens to them—a medical bill, an unforeseen circumstance—and they are stuck in bankruptcy court.

The credit industry comes in and says: We have to do something about these payments. We have to make it more difficult for them to walk out of that bankruptcy court having given up their assets with their debts basically behind them. So the law is changed here in this 500-page bill written by the credit card industry, written by the financial industry, to make it more difficult for a person to walk out of court with their debts behind them. They make sure in this bill that it is more likely for many that they will walk out of court still paying, on and on. As little as $165 a month is enough to say that you will never be forgiven in bankruptcy. You will just keep paying and paying. The creditors will keep calling and calling. That is what the credit industry wanted. They worked hard for 9 years. They are going to win this battle.

We came to the Senate floor and said, at least let us carve out some people who really should be treated differently. I am sorry that the marines who were here earlier didn't stick around. I wish they could have, I wish they could have heard the debate on the floor of the Senate when I offered an amendment and said: If you activate a guardsman or a reservist for a year or a year and a half and they go over to serve their country as they promised, leaving behind a restaurant or a small business which falls into bankruptcy while they are gone—and it has happened—shouldn't we give them a break in bankruptcy court? For goodness'

sakes, these people aren't morally deficient; they are our best, and they are serving our country. They are protecting you, me, and everyone else.

I put in an amendment that said, at least for the men and women in the military who face this kind of bankruptcy—and it happens—let us give them a break in this bill. Let us not put them through the harshest parts of this bill. I lost the amendment 58 to 38. Many of the Senators who go back home and cheer the troops and how much we love them and how much we want to stand behind them couldn't wait to vote with Visa and MasterCard and against the Army, Navy, Marine Corps, Air Force, and Coast Guard. That is what it came to. We lost that amendment.

Senator KENNEDY came to the Senate floor and said: If you get swamped with a medical crisis in your family and go into bankruptcy court trying to get out from under something you will never pay off, shouldn't you, when it is all over, at least be able to go home? Shouldn't you have a roof over your head when it is all over if it is medical bills that put you in bankruptcy court? He offered an amendment and said: Let us at least protect $150,000 in equity in your home that you can go back to after bankruptcy.

Think about that. What will $150,000 buy you? In Springfield, IL, it buys you a nice little house. What does it buy you in Washington, Boston, New York, and California? Not much. But when we offered that amendment, only 40 Senators voted for it and 58 or 59 voted against it.

The argument behind this bill originally was that too many people went to bankruptcy court because of their moral failure. They didn't understand that they can't game the system, they can't use it in a way that is fundamentally unjust and immoral by going to bankruptcy court when you shouldn't go. But in the two examples I have given you, does that argument apply? Is there something fundamentally wrong with the values of men and women in uniform serving our country who can't keep that business afloat back home? Of course not. Is there something fundamentally wrong with a person who feels as if he is on top of the world, goes in for a diagnosis at the doctor, and ends up with a life-threatening disease which costs hundreds of thousands of dollars where his health insurance fails him? Is that a moral failure? It is a failing of Congress. It is a failing of your Government to deal with the realities of the challenges of life, whether it is health care or service in the military.

We went in and argued: What if you were the victim of an identity theft? And it happens; it happened to me. What if someone steals your identity and runs up bills in your name? It can happen to anyone listening to this debate. Senator BILL NELSON of Florida said, in that situation; if all the bills that have swamped you are not even bills of your creation, shouldn't we give you a break under this tough new bankruptcy bill? Overwhelmingly, on a partisan rollcall, the answer was, no. No. Ultimately you shouldn't be discharged from bankruptcy even if those weren't your debts.

We said: What if the people lending the money to you break the law while they are lending it to you? What if they take—and you know this story; it happens in every community. What if they take advantage of an elderly widow or widower living in that little home they have always had? They knock on the door: Boy, you sure could use a new roof, Ma'am. Luckily, I have a company out here that will do it if you just sign a few papers.

The next thing you know, you have one of these phony, predatory lenders coming in with a subprime mortgage with a balloon clause, and grandma's little house disappears. He looked so trustworthy. He seemed like such a nice man. He told me this was a standard contract. Yes, I signed it. I should have called you, but I just signed it.

What about those people? Should they be able to take away her home; go to bankruptcy court and stand in line with all the other creditors and say, Treat me like another legal creditor? I didn't think so.

So I offered an amendment saying those people should not have the advantage of going to court if they have broken the law in the way they make the loan. I didn't have a chance on that amendment. Those who are supporting this bill did not want to talk about that. One Republican Senator supported me. Just one.

Time and again, whether we are talking about victims of bankruptcy who deserve a little help, or whether we are talking about those gaming the system from the creditor's side, we found this stone wall that separates this Chamber. The Republican side does not want to consider any changes to this bill. The credit card industry has written it, and they are sticking with it.

The only perfect laws ever written were written by God and Moses, as far as I am concerned. All of the rest are amendable. All the rest can be improved. Here we assume that if it was generated by the largest credit card companies in America, we cannot argue with them.

One of the best arguments that has been made is, this bill does not apply to people who make less than the median income. That has been a point made over and over and over again during the course of this debate. Why is it important? Because this new law imposes a brandnew set of requirements in bankruptcy court for those who are above the median income. At least that is the argument.

Let me show this listing of all the documents that now have to be filed in bankruptcy court. It is pretty long. I used to practice law. I know it takes time to fill these out. You sit down with your client. You say: Get your income tax returns. Get all the checks you can find. Let's sit down. This will take some time. This is the current requirement under the law. So it is not as if you walk into bankruptcy court, sign your name, and wave and leave out the other door. It is a long process.

During the course of the process, your creditors and the trustee in bankruptcy decide whether you are telling the truth. If you aren't, they will throw you out of court on your ear. That is the way it ought to be.

Now comes this bill which says these papers are not enough. Here we have the new means test. This is an example of what you have to do in addition to all the current requirements to file bankruptcy. This is the means test in this bill. It not only adds to the complexity of this process, it adds to the cost. So here you are without enough money to pay your bills, trying to figure out how to come up with a filing fee of $200, how to pay that lawyer who is going to represent you in bankruptcy, and along comes this bill which says let me give you some more paperwork to fill out before you can qualify for bankruptcy.

The argument has been made over and over again in the Senate that people below the median income do not have to go through this. My amendment will clarify that, amendment No. 110. We want to make it clear that if you have below the median income, you do not have to go through the means test. In other words, on the first line up here, ''current monthly income,'' if you have proof your current monthly income is in the lower income categories, supposedly protected from this bill, that ought to be the end of the story.

It is not now. I want to clarify that. I want to make sure that Members of the Senate who have come to the Senate and said people below a median income could not have to worry about this bill, really mean what they say. I emphasize and underscore my amendment does not in any way relieve those filing for bankruptcy from meeting all the other requisite steps. They still need to complete a lot of forms and schedules outlining assets and liability. We add language that makes it abundantly clear that a court may not dismiss a case based on any formal means testing if the current monthly income of the debtor falls at or below the median family income of the applicable State. The language I offered merely reinforces what Members of the Senate on both sides of the aisle, particularly on the Republican side of the aisle, have said over and over and over again from the beginning of the debate.

Let's look at the statement of my friend and colleague, Senator ORRIN HATCH. Here is what Senator HATCH said in the Senate:

> It is possible that during this debate some may falsely suggest that this bill unfairly treats low-income persons. Let me tell you at the outset that the poor are not affected by the means test. The legislation provides a

safe harbor for those who fall below the median income, so they are not subjected to the means test at all.

But they are. Under the current language of this bill, it is not clear that they are exempt from the means test, as Senator HATCH has argued.

Now, let's take a statement from Senator FRIST, the Republican leader of the Senate. Senator FRIST, on March 1, last week, said:

It [the Bankruptcy Reform Act] establishes a means test that is based on fair principle, a simple principle, and that is this, that those who have a means should repay their debts. A simple principle: Those who have the means should repay their debts. It specifically exempts anyone who earns less than the median income in their State.

That is what my amendment says. If you earn less than the median income, finish the forms that are already provided in bankruptcy court, the new law does not affect you. But if you earn over the median income, you have to fill out more forms. So it means the lower income people, just as Senator HATCH and Senator FRIST have said, will not have to go through the extra expense and the extra time of going through mountains of paperwork.

Let me also take a quote from Senator SESSIONS from Alabama who has been on the Senate floor in support of this bill. Here is what he said:

Chairman Sensenbrenner pointed out that the means-based test only applies to people with incomes above the median state average. Anyone below the state median income does not qualify on the means-based test and their bankruptcy petition cannot be tossed out of chapter 7 and put into chapter 13 where some debts are paid back.

That is as clear as can be. Senator SESSIONS told us that. Now we have another statement from Senator SESSIONS:

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

So my challenge to all those who made those statements is, prove it. Prove it by voting for this amendment. Prove it that if you establish that you have an income below the median income in your area, that you do not have to go through this means test. They have all said it. Now they will have a chance to vote on it.

Let me speak to one of my other amendments. I tried earlier in my first amendment to protect the soldiers activated and fighting overseas who lost their businesses. I failed, 58 to 38. I was surprised by that rollcall, but I watched what happens. Virtually every amendment has failed. As I said, some view this as holy writ. I just view it as a product of the credit industry, their best hope of something they want to pass in the Senate.

So I will offer amendment No. 111 to exempt certain veterans and current members of the Armed Forces from the onerous administrative burdens resulting from the means test. We say in this amendment it applies to members and spouses of members of the Armed Forces on active duty performing a homeland defense activity under title 32, veterans or their spouses whose indebtedness occurred primarily during a 6-month or longer period of active duty or performance of a homeland defense, reservists of the Armed Forces or their spouses, same situation, surviving spouses of those who died while serving as a member of the Armed Forces.

We take a category of Americans to whom we all owe such a great debt of gratitude and say if their debts overwhelm them because they are serving our country, we are going to give them a break, a chance to avoid this lengthy, expensive means test in this bill. I hope my colleagues will reconsider their earlier vote against this amendment. This is a much more compact, succinct, and limited break for those who are serving.

The last amendment I will offer, amendment No. 112, is if I fail on the previous amendment. Let me tell you what it says. It provides an exemption from the means test only for disabled veterans who incurred their indebtedness primarily during a period of service. It covers service on active duty or during a National Guard homeland security operation. Certainly we can give something of a break to these Americans who have given so much to us.

I go out to Walter Reed Hospital. Many of the men and women who have been injured are amputees. I remember one in particular. I said: How are you?

He said: My rehab is coming along just fine. I think I will be great. I have my new leg. I am learning how to walk on it. I would like to go back to my unit, but I am going to go back home. I am a little bit concerned. I had a job back home. I was an automobile mechanic. I don't know if I will be able to return to that job.

That situation for that man and for so many others reflects this change in their life. Yes, they will receive disability payments, but some of them, because of the serious injuries they have faced—head injuries, the loss of both hands, the loss of both legs—will not be able to return to the life they had before. Some of them may find they can't keep up with the debts that have been incurred while they have served our country. Is it possible the Members of the Senate, for disabled veterans, would give them a break if they are forced into bankruptcy because of debts incurred while they served our country? That is my last amendment.

I hope it doesn't reach that point. I hope all of us who come to the floor to give important speeches in tribute to the men and women in uniform will cast important votes on behalf of those men and women.

The credit card industry is important to America. I think they can do a better job in the business in which they are involved. They ought to take care, with the flood of credit cards that they send to everybody under the sun—the 3-and-a-half-year-old little boy of an attorney on my staff, a 9-month-old daughter of a friend of mine, all receiving credit card applications. They are throwing them at America. Many Americans, without thinking twice, are signing up, going more deeply in debt than they should.

The monthly statement from the credit card company—I am telling you this as a lawyer—flip that over and try to read the fine print. Senator AKAKA of Hawaii said: Shouldn't they tell you at least if you make a minimum monthly payment how much it is going to cost you over the period of time it will take to pay it off? Simple enough. The credit card industry opposed it. It was defeated on the floor. The idea of giving Americans more information so they can make the right credit decisions was defeated on the floor.

You have to believe the industry that opposed providing that information is an industry that doesn't care if you go head over heels in debt. They think they are going to win. They are certainly going to win if this bill passes because that credit card debt is going to hang on for a lifetime. You won't be able to shake it. When we hear the stories of people who are going to be victimized, I hope we will think twice about the wisdom of this legislation.

The trustees in bankruptcy were asked to take a look at what percentage of people filing for bankruptcy were fraudulent, had no business in court. They came up with the number 3 percent, 3 out of 100 are fraudulent and should not be in court. Most of them are discovered. The credit card industry said, no, it is much larger. It is 10 percent, 1 out of 10. This bill doesn't apply to the 10 percent of fraudulent filers. This bill applies to every filer in bankruptcy. That is why many of us think it is fundamentally unfair.

I can read the votes. I have been around Congress to know this is going to pass. I certainly hope with these three amendments that my colleagues will take some time and consider whether they want to live up to what they have said. If they want to exempt lower income families from the means test, my amendment lets them do it. If they do believe we owe something to the men and women in uniform, my amendment gives them a chance to vote that way. And if for no other reason they want to show some sympathy and concern for disabled veterans who have given so much to our country, they will have a chance with amendment No. 112.

I hope the solid wall of opposition to every single amendment will break down. I hope my colleagues will take the time to read and consider these amendments. It will be a lot easier to face the people back home if we at least give some flexibility to this bill when it comes to these important exceptions.

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. 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.

Mr. SESSIONS. Mr. President, I am proud of the bipartisan bankruptcy bill moving forward. We were excited over the strong vote for cloture to bring this debate to an end, 66 or more votes for cloture. That was a tremendous bipartisan show of support. I know my friend, the Senator from Illinois, opposes the bill. He has offered a lot of amendments. Fundamentally he doesn't like the bankruptcy bill. At one point he did. At one point he was a sponsor of it. For whatever reason he is now not supporting the bill. That is all right.

Our goal with regard to the bankruptcy bill was to continue the historic privilege that Americans can wipe out debts and have a fresh start. However, since the new bankruptcy bill was passed in 1978—that is the new one we are now under, a big bankruptcy reform—then we had about 200,000 filers in bankruptcy. Now there are 1.6 million filers in bankruptcy. A lot of people are using bankruptcy as a way to avoid paying their just debts. We wrestled with that. There was a lot of concern that something is out of sync, that the classic American moral value that you ought to pay your debts if you can ought to be honored.

At the same time we ought to create a circumstance in which people can start over. As many Americans have learned, if they fall behind in payment of debts, creditors call. You can have lawsuits filed against you. Families get embarrassed. Court orders get issued. Those kinds of things can be upsetting to a family. Sometimes you get so far behind there is no way you can get out of it. That is what bankruptcy is for. So we looked at it and tried to figure how we could reach the right balance.

How do we crack down on those who want to get off scot-free, not pay their debts, when they have the money to pay them, and do we protect those who need a fresh start? First, let me tell you the power of bankruptcy. A person making $200,000 a year, who owes maybe $150,000 in various debts, can go into bankruptcy court and file bankruptcy today and get all those debts discharged, when he or she could easily have paid back most of them. That is the way the system works. You read one of those ads and call one of those guys or ladies who advertises in the free newspaper at the checkout counter, and they tell you to call your bankruptcy lawyer and wipe out your debts. People do it—sometimes only after talking to that lawyer who only gets paid, frankly, if the client retains him to file a bankruptcy. They may have other alternatives to get out of that financial difficulty and they may not understand that.

What I want to emphasize is that we decided to create a bright line, a rule that would apply easily across the country in bankruptcy court, and that is what we are doing—amending the law of bankruptcy court, which is a Federal court, under Federal law. All bankruptcies are done in Federal bankruptcy court, so it is our responsibility to deal with the problems in that court. So we created a bright line rule.

If you make below median income and you owe debts, you can wipe them out, as you always have. You don't have to pay your doctor, your hospital, the automobile mechanic down the street who fixed your car, your brother-in-law back for his loan, the credit card company, or anybody else you owe—the bank, the credit union, wipe them out. So if you make below median income, the law is basically still the same for the debtor; he wipes it out. We had expert testimony in the Judiciary Committee, of which I am a member, that said 80 percent of the people who file bankruptcy make below median income, only 20 percent above. We said what about people who make above median income, but they might have special circumstances? Maybe they have a child who has a high monthly expense. Maybe the debtor himself is disabled, with extraordinary medical expenses, or things of that nature. We said we would make an exception for those people who have extraordinary expenses, and the estimates show that would add another 7 to 10 percent who would be able to automatically file under the median income and, therefore, would not have to pay any of their debts back under this other provision of bankruptcy law, chapter 13. So we agreed on that.

That is the bill that passed. That means test philosophy passed this Senate, one time, 97 to 1. It passed three times in this body. The last time we voted on it, it was 83 to 15 to pass the bankruptcy bill. We had the Schumer amendment on it—which we voted down recently—at that time, and the House of Representatives refused to take the bill and pass it. It died because of the Schumer amendment, which was a maddening thing for those of us who had been working on it for 4 years. I thought it was unbelievable that such a small but poison pill could kill the legislation. I have heard a lot of times about how a poison pill can kill a piece of legislation. Since I have been in the Senate, I have never seen a more perfect example of a poison pill. It came back up. Senator SCHUMER offered it and we voted it down earlier today.

This bill will not have the poison pill in it. We sent it over there with bipartisan support every time and, for one reason or another, it didn't become law. The House supports it. I am confident if we pass this legislation, without the Schumer amendment, it will pass the House of Representatives and go to the President for signature. I emphasize all this to say there is nothing wrong with the means test. People who make high incomes—lawyers, doctors and accountants are examples—and file bankruptcy, wiping out all their debts, who don't care who got hurt by their failure to pay and they care only about themselves, this will crack down on those people who are abusing this system. I don't think there is anything wrong with it. I believe it is the right thing to do.

As a matter of fact, I hear even those who oppose the bill say they don't oppose the bill, but they have spent all the time trying to confuse this, suggesting that poor people are going to have to pay something back. The chances are, if they are poor and are making below median income in America, they won't have to pay back anything. What if they make above median income? Perhaps they will have to pay back a portion of their debts. The bankruptcy judge, under certain circumstances, may order that they pay back a certain percentage. They can be made to pay a certain percentage of those debts back through the court, and it is distributed on a fair basis to the creditors who have claims against the debtor for a period not to exceed 5 years. That is what is commonly and legally known as chapter 13.

A lot of people all over America choose chapter 13 and agree to pay back their debts because they think it is the right thing to do, and it has some personal advantages. A lot of people find it hard to believe, but in my home State of Alabama, about one-half of the filers in bankruptcy court choose to file under chapter 13. What happens when you go into chapter 13? All the phone calls have to stop. You cannot be sued. If a lawyer tries to execute a judgment against your property after you filed in bankruptcy under either chapter 7 or 13, they are in contempt of court immediately. The family gets to calm down. The court helps set up a repayment schedule for a part of the debts the debtor owes, and their paycheck may go to the bankruptcy court and they parcel it out to the various creditors, and the debtor gets to keep a certain amount to live on, whatever he or she needs. That is the way chapter 13 works. It is not oppression to go into chapter 13. Almost half of the people in my State who file bankruptcy choose to file under chapter 13.

Well, Senator DURBIN quoted me. I was impressed that out of all those out here, he quoted me. I suppose he quoted me correctly, but maybe he was a little bit incorrect in interpreting what I had to say, or perhaps I spoke in a way he did not understand. I thought I was clear. I said in my remarks that if you make below median income, you are not subject to the means test. I guess that technically may be a misspeaking. What I meant was you are not required to pay anything back under chapter 13. He said, well, why fill out the forms? Well, you fill out the forms to see whether your income falls below the median income in America; that is why

you fill out the forms. Surely, people would expect you, if you want to ask a U.S. bankruptcy court in whatever State in America you are in and you want to ask them to discharge your debts, and you want them to order that you do not owe anybody you have been owing for the last 10 years, and your debts are built up and you don't want to pay any of them a dime, surely it is not too much to ask somebody to show what their income is, to bring in a payroll stub to see what your paycheck is, and bring in an income tax return to see what you have been showing on your income tax. What is wrong with that? They say, oh, we have all these documents. I am telling you, I don't think we ought to be shocked that before a court wipes out maybe hundreds of thousands or tens of thousands of dollars in debt, they at least find out how much income the guy has and how much property. What if they own 500 acres of land out in the country? Should they not have to declare their assets?

Why should they keep property, stocks, bonds, or anything else of value and not pay the people they solemnly committed to pay? If they have assets, let's find out what they are. That is all we are talking about.

How are you going to tell whether a person qualifies for a means test if you do not have them produce some information about their income? I do not think that is oppression, and I do not think people are being oppressed if a credit card company lets them have $5,000 and they do not pay a dime of it back. I do not think a person is being oppressed. This is not some sort of anti-capitalist body. People get money all the time. They borrow money. They promise to pay it back. If nobody pays back their debts, everybody who uses a credit card will find their costs going up. Every bank loan will go up; every housing loan will go up. We have to have integrity, but we are going to give people—1.6 million of them a year last I heard—the ability to wipe out their debts. For probably 90 percent of them, they can wipe out all of them if they choose, and for the remaining 10 percent, they may have to pay some back. Some of those people absolutely ought to be paying back some of their debts.

We are all just victims here. It is so discouraging to me to hear skilled Members of this body talk about the American people as if they are just victims and pawns. I have seen the polls. Overwhelmingly, the American people believe you ought to pay your credit card debt back rather than pay other things because they know their interest rates are higher there. Frankly, I think everybody ought to reduce their credit card debt. They ought to chop them up and throw them away.

I was glad that my children—my two daughters and son—when they were off at college had a credit card. I told them not to use it unless they had to, but if they were out on the road and the car broke down, or something happened, I trusted them to use that credit card. What a wonderful thing. Anywhere in America—actually anywhere in the world—you can stick that card in a machine and out pops money. And if you pay it on time, you hardly pay any interest.

I am not here to condemn the credit card companies, and I reject and am offended by the repeated suggestion that this bill is supposed to do nothing but protect credit card companies. That is false. It demeans the integrity of the Members of this Senate, in my view, who have worked hard on a bipartisan basis, 85 to 15, the last time we passed this legislation. I guess that is all they have to say when they complain about the bill.

We talked about the military, and I am concerned about our military. I offered—and I was pleased that the President made part of his supplemental appropriations bill—an amendment to increase the death benefits of our soldiers, raising the basic death benefit from $12,000 to $100,000 and increasing the SGLI, Servicemen's Group Life Insurance, to $400,000 from $250,000, retroactive to the beginning of the war on terrorism. It will help all those families.

I, like other Senators, visited soldiers in the hospital at Walter Reed. I visited them in Germany. I have been in Iraq three times. I have talked with all the families from Alabama who have lost soldiers in the war. I served in the Army Reserve for 10 years, missing by several years being activated in the first Gulf War. Some of my best friends are still in the Army Reserve. I understand what they are going through. I talked with them in Iraq in January of this year. Some have suffered financial difficulties as a result. We know that.

I offered the amendment that would make clear and explicit that a service man or service woman who has been activated and is not able to pay their debts would, in fact, be a special circumstance that could keep them from having to pay back their debts under chapter 13, and they would be able to wipe out all their debts. No matter what their debts are, if their income is below median income, they get to wipe them out anyway. It is just in that top 20 percent, they may need special circumstances.

I defined it, and we passed—at the same time, Senator DURBIN's amendment was voted down—to give them that special protection. I think that was the right way to do it. Senator DURBIN had an automatic guaranteed set-aside for them in a way that I think was not as appropriate as the route the Senate chose to take. But he got a vote on his amendment and I got a vote on my amendment.

I also recall, for those who are listening, that we do have a powerful Soldiers and Sailors Relief Act that has been updated. That is the new title. The old, classical Soldiers and Sailors Relief Act says if you are off on active duty serving your country, you cannot be sued, they cannot take a judgment against you, they cannot foreclose on your home, and there are a host of other protections for them.

They have those protections. Plus, when you come back, you can bankrupt against any of the debts you may have. If you make above median income, the judge can consider and should consider military service as a special circumstance. I think that is the right way to do it. I believe we did the right thing on that issue.

It really hurts me to hear people suggest, because they are unhappy with this bill and they filed an amendment that was not adopted exactly like they wanted it, that we who adopted the amendment to deal with this issue are insensitive to military men and women serving America.

Those are some of my thoughts, Mr. President. I think the bill does a lot of good. There are some things about which we have not talked. We had the critics dominate the debate and point out everything they think is wrong and offer amendments. Senator FEINGOLD has 15 amendments. Remember now, this is the fourth time this bill has been on this floor. The last time, we debated over 2 weeks on the legislation with amendment after amendment. This time we are going to be 2 weeks on it. I think we debated 2 weeks the other two times. There has been extensive debate. We have had debate and amendments offered in the Judiciary Committee likewise on these issues where Senator FEINGOLD, Senator DURBIN, and others serve.

We have tried to be fair and open. Everybody has had a chance to raise their concerns, but it is time to vote and get this bill in the barn and move on to other issues.

I want to mention a couple points that are so important for people in America who are having a hard time. Women and children who are victims of divorce and separation, deadbeat dads—what about that issue?

In the course of our deliberations, we made a bipartisan commitment to raise the top debts that arise from alimony or child support to the highest level of a bankruptcy court. In other words, when there is a limited amount of money, the bankruptcy judge decides who gets paid first. In the past, they have always paid the lawyers and the court fees, and then they had some other things, and then women and children came along. We raised women and children to the top of the list. Of course, that is one reason they are unhappy with the bill—trust me. We also put some other provisions in it to reduce some of the litigation that goes on in bankruptcy court.

We raised women and children to the top of the list. The National Child Support Group and the National District Attorneys Association that handles child support issues said it is absolutely a fact that women and children have a substantial benefit under this

act. One person said it is a veritable wish list for helping women and children who are owed child support and alimony to collect those debts. And they get paid even above so many other people.

Also, I note that secured creditors are next, and the unsecured creditors, such as the credit card people, and those with personal notes and bills, such as your local gas station. Those debts come in as unsecured debts, and they are further down the list.

We do not raise credit cards above people. We actually raised women and children up to the highest group. So I think there are a lot of good things in it, including a requirement that people who want to pay their debts, cannot handle their money and manage it well, must attend a financial management course before being discharged from bankruptcy. We want to see people manage their money well, get rid of those credit cards, contain their spending and manage their money wisely. That is what we would like to see them do. That is what the bill requires.

It also says a person at least ought to talk with a credit counselor. These exist all over America. Many times they can help people manage their money. They get the whole family around the table, they talk honestly about what their financial situation is, what their debts are, and how they would have to be paid back. They have the ability to call the bank, the credit card company, or the mortgage company and say: We believe this client could file bankruptcy, but if you will allow them to reduce their payment to you for the next year and pay down some of these critical debts they owe, we will get back to you in full speed. We will help them achieve that. We will work out a budget with them.

Many creditors agree to extend—some even forgive a part of their debts in order to help debtors so they do not have to file bankruptcy, and they learn something in the process. They do not have to go into credit counseling. They can go straight to the lawyers and file bankruptcy in the traditional way. I think some may decide that maybe this is the better alternative for them.

If they go in response to one of those late night ads on television, or one of those newspaper ads to the bankruptcy mill, they are not going to get that information in most instances, although some lawyers, I am sure, do give them advice.

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

Mr. SESSIONS. Yes.

Mr. DURBIN. We are having an exchange, and maybe since we are both in the Chamber we can at least come to an agreement on our disagreement. And I will yield some of my own time if it reaches the point where the Senator thinks it is taking advantage of his time.

Mr. SESSIONS. I was about to yield the floor, but, please, go ahead.

Mr. DURBIN. If the Senator would stay for a few moments, I would like to see if we can get to an agreement on our disagreement.

Right now, under current law, when I go into chapter 7 filing for bankruptcy, I am bound by the requirements of the Bankruptcy Code under section 521 to file a list of my creditors, unless the court orders otherwise, a schedule of assets, liability, current income, current expenditures, and statement of debtor's financial affairs and more when it comes to consumer debt currently. That is what happens when one goes into bankruptcy court—and that is this sheath of paper—they have to fill these things out. These are the documents that get one into court.

Mr. SESSIONS. I would just add, one has to list those debts, and if they do not list them they are not discharged and they can still be liable for them. So the debtor has to list his or her debts.

Mr. DURBIN. So one has to be careful. They better put all of their debts down if they want to have them discharged.

Mr. SESSIONS. Right.

Mr. DURBIN. In comes the new law, and the new law says if one is below median income, that is the end of the story. They continue as currently required under chapter 7. They do not have to go through and prepare and file this means test which is required here because they are not required to.

Page 18 of the bill, no one can challenge a person if in the case of a debtor in a household of one person, the median family income of the applicable State is applicable. So this is the point that has been made over and over, again that having filed the basic documents in bankruptcy, if it is then established that one is below the median income, end of the story. This bill does not apply. That is the way I understood it.

My amendment is trying to clarify it to make sure that is the way the Senator understands it. In other words, if I have done all of the basic filing and I disclose my monthly income and I am below median income, then I do not have to fill out the forms for the means test; it does not apply to me.

I quoted the Senator earlier, Senator FRIST, and Senator HATCH, who have all said that on the Senate floor. My amendment clarifies that and says that unequivocally, after someone has filed their basic documents, if they demonstrate their monthly income is below the median income, they do not have to fill out the forms for the means test as to what they can pay over the next 10 years. They are not covered by that.

Is that the Senator's understanding of what this law says?

Mr. SESSIONS. I think that is my understanding of it.

Mr. DURBIN. Well, my amendment is only trying to clarify that. That is all it is doing. What I just described to the Senator is to say unequivocally, if someone files the initial documents currently required under chapter 7 and demonstrates to the court that their monthly income is below a median income, they do not have to fill out all of the additional paperwork required in the means test, which is substantial and expensive. If the Senator feels as I do, that that is what the law says or should say, I hope the Senator will look at my amendment. It is not a trick amendment. It is just trying to clarify that point.

Mr. SESSIONS. I would be glad to review the amendment. It would appear clear to me that one does need to meet certain basic filing requirements.

Mr. DURBIN. Absolutely.

Mr. SESSIONS. So the income can be determined, and we did step that requirement up to require more in connection with income tax return filings and things of that nature.

I know the Senator is a member of the Judiciary Committee and has worked hard on this bill, so I respect his concern over this issue. I am not one who believes we have a problem, but I will be willing to look at it.

Mr. DURBIN. If the Senator would be kind enough to review my amendment, I would appreciate it very much.

I yield to the Senator.

Mr. SESSIONS. I yield the floor.

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

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

The bill 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.

AMENDMENT NO. 89

Mr. FEINGOLD. Mr. President, I call up amendment No. 89 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment is once again pending.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Senator KERRY, who is the ranking member of the Small Business Committee, be added as a cosponsor to the amendment.

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

Mr. FEINGOLD. Mr. President, we have spent a great deal of time debating and trying to improve provisions of this bill that affect consumer bankruptcies. Most of my colleagues may not even be aware that this bill actually contains provisions that make significant changes to portions of the Bankruptcy Code that relate to small businesses. They may not realize it, but it does. Subtitle B of title IV of the bill is entitled ''Small Business Bankruptcy Provisions,'' and I doubt more than a handful of people in this body have any idea what is in the subtitle.

The subtitle includes a number of new restrictions and requirements for small businesses that want to reorganize under chapter 11. That is right, these are requirements and restrictions for small businesses that do not apply

to large companies. I was shocked when this came to my attention, but there it is in black and white, subtitle B, ''Small Business Bankruptcy Provisions.''

These are not provisions to help small businesses, as one might expect from a bill that is going through the Senate. No, these provisions penalize small businesses. They make it harder for small businesses to reorganize in order to survive.

Here is an example. Section 434 would require regular reports on the small business's profitability. They will have to report all kinds of things: profitability, cash receipts and disbursement, requirements to be in compliance with postpetition requirements, timely filing of tax returns, and ''such other matters as are in the best interests of the debtor and creditors.''

This is a mountain of information. Mom-and-pop operations will have to spend a great deal of time pulling these reports together, and the reports probably will not even be useful. Creditors and judges examining a debtor's profitability rely on cash disbursements and receipts, not self-reporting, because they are more informative and less subject to manipulation. It seems to me these reports will not be of much use to anyone, but they will be quite burdensome for a small business to produce on a regular basis.

What is the penalty for failure to jump through this bureaucratic hoop? Dismissal. Again, not for large corporations, mind you, which have armies of accountants to handle paperwork like this, but for the small entrepreneurs who could be spending that time keeping their businesses afloat instead of producing these piles of paper for some government file which basically no one will ever use.

I do not want to have to go back to Wisconsin and have to explain to a grocery store owner who is already working late into the night, trying to pull her business through a financial crisis, that the Federal Government has decided to keep her even longer to put together a report that nobody even plans to read. I am very concerned, almost ashamed of this Chamber to think I would have to tell her that if she were a big corporation, if she were the big chain of huge grocery stores, then the law would not require this of her. It would not treat her this way.

Professor Elizabeth Warren wrote, when the same language was proposed during the 107th Congress:

> A decision by Congress in 2001 that small businesses should bear greater costs, face shorter deadlines, file more papers and lose any flexibility that a supervising judge might provide is a decision to shut down small businesses simply because they are small.

That is what Professor Warren wrote.

I can see no justification for imposing burdens on small business in the bankruptcy code that will not be imposed on large corporations. It has always been our responsibility as legislators to protect small businesses. My amendment calls on us to fulfill that responsibility in a very significant way. It would simply strike a number of the provisions in title IV, subtitle B of the bill.

Small businesses are the backbone of the American economy. According to the Small Business Administration, small firms represent 99.7 percent of all employers and pay 44 percent of the total U.S. private payroll. Small businesses have generated from 60 to 80 percent of the net new jobs created annually over the last decade. I can't figure out why, for the life of me, we are trying to make life harder for small businesses.

What is particularly puzzling is that I have heard a number of my colleagues complain about the burdens that they believe federal regulations impose on small businesses. The head of the Small Business Administration recently testified before the Small Business Committee that ''[s]ome of the heaviest burdens borne by small business in America are the result of unnecessary federal regulation and red-tape.'' If my colleagues share that belief—and even if they don't—why would we want to impose further Federal regulations and red tape on small business chapter 11 bankruptcies?

The worst thing about this attack on small business is that it is utterly unprovoked. Another provision of this bill would impose harsh deadlines on small businesses seeking to reorganize under chapter 11, but these deadlines are apparently designed to solve a problem that doesn't exist. The bill's drafters perhaps believed, back in 1998, that chapter 11 offers a shelter for failing small businesses, allowing them to delay the inevitable and die a lingering death to the detriment of their creditors. But this is just not the case.

The bill would impose an arbitrary 300-day hard deadline for a small business to file its reorganization plan. But a recent study of small business bankruptcy cases by Professor Douglas Baird of the University of Chicago Law School and Professor Edward Morrison of Columbia Law School shows that this deadline is completely counterproductive. According to this study, more than half of small business chapter 11 cases that fail—in other words, those that are dismissed, or converted to chapter 7 liquidations—are terminated within 4 months of filing. Over 70 percent are terminated within 6 months. By 300 days more than 90 percent have already left the system. In other words, the 300-day deadline imposed by this bill will affect a very small percentage of small business plans that are actually bound for failure. It constrains the discretion of bankruptcy judges, without any apparent justification for doing so, since reorganization cases without merit are already being terminated in a timely manner.

Instead of protecting the system against abuse by small businesses doomed to eventual failure, this bill will punish primarily small businesses that would otherwise succeed. Professors Baird and Morrison found that of the small businesses that successfully reorganize under chapter 11, nearly 40 percent need more than 300 days to do so. In other words, the facts show that by 300 days, most failing small businesses have already failed but many viable small businesses are still struggling. We should be helping them, not terminating them. Forcing small businesses capable of successfully reorganizing into chapter 7 liquidation proceedings is bad for their creditors, and tragic for the entrepreneurs who will see their livelihoods and their hard work over years or even generations needlessly destroyed.

Compare the hard deadline in the bill to what happens in the bankruptcies of large corporations. United Airlines filed for chapter 11 protection in December 2002. That is over 2 years ago. And the court has continually allowed the effort to come up with a reorganization plan that the creditors can accept to continue rather than force the airline to liquidate. We still don't know what will happen in that case, but clearly it is worth trying to save that company, with all its employees and devoted customers. Why don't we want to allow the courts to exercise the same flexibility for small businesses? Are they just not as important as the big corporations like United? Is that the message the Senate is trying to send with this bill? I can hardly believe that my colleagues want to send that message. But this could have a big impact on the ability of small businesses across the country to survive, so I urge my colleagues to take a close look at this amendment.

These new burdens on small businesses are simply wrong. Congress simply should not be in the business of forcing viable small businesses into liquidation. And why are large corporations seeking to reorganize not similarly burdened? Do the bill's drafters think that large businesses are more important than small businesses, so we should give them extra time to reorganize?

There is an additional irony here when you compare the requirements we put on large and small businesses in bankruptcy that my colleagues should consider. Large companies are often subject to a variety of reporting requirements by the federal securities laws that are not applicable to small businesses. But the SEC often exempts companies in chapter 11 from those requirements. At the same time that large companies are often excused from onerous reporting because of their bankruptcy, this bill puts additional reporting requirements on small businesses. Where is the fairness in that?

If there is a crisis with small business bankruptcies, I am not aware of it. Professor Warren, one of the country's leading bankruptcy experts, was one of the authors of a 1999 Small Business Administration study. That study

found that one-third of bankrupt businesses had less than $100,000 in debts and almost four out of five had less than half a million dollars in debts. What is more, almost half—45 percent—of the small businesses had one or no employees when they filed for bankruptcy. These numbers don't give me any reason to think that small business bankruptcies are such a serious problem that we need to enact special provisions targeting them.

Bankruptcy experts tell me that these small business provisions are just crazy. But they have been in the bill forever, and most of the focus is on the consumer provisions when we debate this bill. Someone needs to stand up and say, ''Wait a second. Why are we discriminating against small businesses in the bankruptcy laws?'' I can't think of a single bill in my entire time in the Congress—over 12 years—where a single law on the books treats small businesses worse than big corporations. That is the opposite of what we usually do in this body. We always protect small businesses. Why is this bill any different?

When I offered this amendment in the Judiciary Committee, I heard two arguments against it. The first was that the provisions were recommended by the National Bankruptcy Commission. This is a very odd argument, coming from the same people who completely ignored the commission's work on consumer bankruptcy issues and drafted a bill largely in response to the credit industry's recommendations. But more importantly, I have been told that the commission provisions were created by certain commissioners who wanted to reform chapter 11 for all companies, large and small. The big companies came in and said: ''No, don't do that to us. Those deadlines are too restrictive.'' Here is what happened. The recommendation was amended to apply only to small businesses. There was no showing that there are more abuses in small business bankruptcies than in chapter 11 filings for large companies. Small businesses apparently just didn't have the right lobbyists watching the process. So they got stung by these wrongheaded provisions that live on year after year in this bill without anyone coming forward to explain why they are necessary or useful.

The second argument that came up in the committee was that small businesses support this bill. That is true, at least for some small businesses. But they don't necessarily support the particular provisions that I am talking about. They may not even know about these provisions. Small businesses, like large businesses, support the bill because it makes it harder for consumers to file for bankruptcy. But I doubt very much that they want the law changed to make it harder for struggling small businesses to reorganize under chapter 11.

This is an important example of how this bill fails to reflect lessons we have learned in the years since it was first proposed. Given the recent history of large-scale corporate bankruptcies and scandals, the way this bill cracks down on small businesses is not only misguided, it is shocking. We should be focusing our energies on the real problem, not penalizing small businesses.

I urge adoption of this amendment, and I hope that small businesses all across this country will be watching this debate. Those people who think the Senate is devoted to the interests of small businesses may be in for a rude awakening if this amendment is not agreed to.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. 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. DEWINE. Mr. President, I ask unanimous consent to proceed in morning business and I also ask unanimous consent that the time be counted as postcloture time.

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

(The remarks of Mr. DEWINE and Mr. DODD are printed in today's RECORD under ''Morning Business.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 67

Mr. DODD. Mr. President, I call up amendment No. 67.

The PRESIDING OFFICER. That amendment is pending.

Mr. DODD. Mr. President, this amendment—we have checked with the Parliamentarian—is a germane amendment to the bill. It was filed prior to the appropriate time, at the hour of 2:30 p.m. yesterday. Let me explain what this amendment does and why I am offering it this afternoon.

I am offering this amendment to enable parents to meet the needs of their children. We just heard our good friend and colleague from Ohio talk about Mothers Against Drunk Driving and the problems that occur with underage drinking. It is appropriate, after that discussion, that I offer this amendment because it is not unrelated, we know the difficulty of single parenthood, of how hard it is for single parents, the overwhelming majority of whom are women, to try to raise children on their own, all of the pressures of holding down jobs and managing a family. It will not come as any great surprise to my colleagues to know that a significant percentage of underage drinking and children who have problems with the juvenile justice system and other related issues come from broken homes, unfortunately. The tremendous pressures of a single head of household holding down a job and keeping their family together is not easy.

This amendment I am offering today on this bankruptcy bill relates to these familial circumstances, and it comes in several parts. I am going to take a few minutes and explain this amendment and why I believe it is important.

Very simply, during the financial crisis of living through a bankruptcy, children should be protected to the maximum extent possible. That is my strong belief. I believe it is the belief of all of us. Regardless of one's politics or ideology, I think we all understand that when a family is going through bankruptcy, we ought to do what we can to protect the innocent. Whatever one's feelings may have been about the parents, about their responsibility or irresponsibility, children should not be penalized because of the sins or the faults of their parents. This amendment is designed to at least attempt, under those trying circumstances of a family going through bankruptcy, to protect those who are innocent—the children—to the maximum extent possible.

About 39 percent of those filing bankruptcy in the United States are single women raising children, almost 40 percent. About 29 percent, almost 30 percent of those filing for bankruptcy are men, and 32 percent of households filing for bankruptcy are married couples. So we are talking about 70 percent of those who are filing fall into the area of single parents and their problems related to it. While there may be some people who are trying to scam the system—and there certainly are, and I do not argue with that point at all—I believe most people do not file bankruptcy lightly. It is a highly emotional time and one of financial crisis.

The most common reasons for 90 percent of women filing for bankruptcy include medical emergencies, job loss, and divorce. Women are especially vulnerable because they tend to have lower incomes and fewer assets and are more likely to be caring for children on their own.

If my colleagues truly cared, and I believe they do, about protecting mothers and the innocent children who are caught up in the tremendously disruptive time of bankruptcy, I think they will end up supporting this amendment. At least I hope they do. If our colleagues truly care about marriage and strengthening marriages, they also would support this amendment. I cannot think of many more things more stressful on a marriage than filing bankruptcy.

My amendment covers four main areas to protect children during this turbulent and emotional time. The amendment would modify the means test to provide greater flexibility and reasonableness when calculating a

debtor's ability to pay. Allowable expenses are broadened to ensure that parents, whether married or divorced, can still support their children as they live through a bankruptcy.

For example, the amendment would allow a single mother, recently deserted by her husband, raising children who has filed for bankruptcy to continue paying education expenses for her child. Let us say that the mother, being a religious person and from a family that had used parochial schools for generations, is struggling to keep her child in one of these parochial schools. In this case, her 10 year old son has gone to a parochial school since kindergarten. It is where his friends go. After being fairly shy and withdrawn, he has begun to thrive there, has developed close relationships with several of his teachers. The mother was able to obtain a hardship reduction in tuition from the archdiocese, reducing the tuition to $3,500 a year.

Under the means test in the pending legislation, under our bankruptcy bill, this mother could not file chapter 7 or chapter 13 if she continued to send her son to parochial school. The means test allows only $1,500 for tuition and any other education expenses—not enough for any religious school. We are not talking about some fancy prep school or boarding school; we are talking about a basic parochial school education, which in many areas of the country costs around $5,000 per year, sometimes even slightly more. One of my neighbors told me that the parochial high school his son attends costs roughly $8,000 a year.

The child did not file for bankruptcy. Why during this turbulent time should the child be ripped away from his circle of friends and moral mentors? This should be a time when the child needs his friends and trusted teachers the most, his circle of security, particularly during a time of separation by parents and a bankruptcy.

The amendment would allow expenses associated with employment, such as child care, and it would allow alimony and child support to be used as intended to cover the needs of children in the household. Particularly with children, there are emergency expenses that arise, and any means test ought to reflect that reality.

Second, this amendment would ensure that support payments and other funds, such as refunds from the earned income tax credit or child tax credit, intended for the current needs of children do not become the property of the bankruptcy estate with the corollary potential of being distributed to creditors. Money intended to support children and their needs should go to children who need it, not creditors, in my view. Why should the earned income tax credit or the refundable child credit be yanked away from supporting children so that the depth of poverty in which they may live becomes even greater?

Thirdly, the amendment enables debtors going through bankruptcy to keep personal property normally found in or around the home, excluding automobiles. This would ensure that in bankruptcy situations, families with children are able to keep, without fear of repossession, household goods that typically have no resale value.

Fourth, the amendment would ensure that debtors are not forced into bankruptcy court to seek to prove that some of these items have any value for resale and would necessarily have to be added, forced into bankruptcy court to prove these items were not luxury goods.

This amendment, which I had hoped the managers of the bill would agree to, it is more technical than anything else. I am sorry it is not being accepted, because it goes to the very heart of what many of us have talked about and tried to accomplish over the years since bankruptcy laws were first modernized and adopted over a century ago in 1903. This amendment deals with families and spouses, with child support issues and where they come into context of priorities when it comes to discharging responsibilities under the Bankruptcy Act.

In 2003, as much as $95 billion in child support payments remained uncollected in the United States. It is a staggering sum of money and makes a huge difference to children growing up under adverse circumstances. It is estimated that one out of every other child living in poverty could be taken out of poverty if we were able to collect child support. Forget about appropriations or tax provisions we may adopt. if we could just collect the $95 billion in unpaid child support, we could virtually eliminate poverty in one out of every two children growing up under those circumstances in the United States.

The bankruptcy bill before us is going to make it more difficult in many ways for those families out trying to find those spouses who owe this child support to make it available. Thus, I believe we are going to exacerbate the problem of children who rely on child support and families who rely on alimony being able to get those resources to minimize the effects that a divorce and separation can cause.

When one excludes the ability to receive the financial support necessary to make ends meet, the problem becomes, obviously, even more pronounced, and children bear the price. Again, I repeat, whatever one may feel about the parents and their irresponsibility, putting themselves and their families in jeopardy, we ought to be highly sensitive to what happens to children. It is not their fault that their parents are filing bankruptcy. I do not believe necessarily it is the parents' fault either in many instances, with medical expenses, with divorce and job loss being the reason a large percentage of bankruptcies occur.

Putting aside that for a moment, whether one agrees with those numbers, I do not know of a single person in this Chamber who would disagree with what I am about to say. Children should not have to pay the price of their parents' mistakes, and yet that is what we are going to do with this bill if we do not take some steps to try to correct the situation.

Since 1903, our Nation's bankruptcy laws have been guided by the firm principle that women and children must be first in the distribution line of available assets during a bankruptcy proceeding. For over a century, debt owed to children and families has been nondischargeable. Thus, if a head of a household fails financially, whatever remaining assets he has could be used to spare his spouse or ex-spouse and his children from impoverishment. We do this because those who are most vulnerable in our society deserve the most protection.

Today's bill, the Bankruptcy Abuse Prevention and Consumer Protection Act, would fundamentally alter this delicate balance achieved after a century of jurisprudence. We are altering the bankruptcy landscape for the benefit of credit card industry without understanding or recognizing what the consequences for families will be. Women and children will be disproportionately affected by this legislation unless it is amended, which is what I am trying to do with the amendment now before us.

Whether as debtors filing for bankruptcy themselves or as creditors, three-quarters of a million women will be affected this year by the bankruptcy system, and it is estimated that as many as 1 million women will be affected in the coming year. I agree with those of my colleagues who think the bankruptcy law needs to be reformed and tightened. I do not disagree at all with that. But in my view it is possible to enact legislation that tightens the laws without depriving debtors and their families of reasonably necessary living expenses to care for their children.

As this legislation is currently drafted, however, the credit card industry is protected, more protected than they have ever been. Unfortunately, families are not, in my view. This bill could turn the lives of children and families literally upside-down.

I think it is enough of an emotional roller coaster for a parent to file bankruptcy, but I think to elevate the needs of the credit card companies over the needs of children is simply wrong. I am greatly concerned about the means test, which requires the trustee in bankruptcy to review all chapter 7 cases for ability to pay debts under a rigid IRS formula devised originally for delinquent taxpayers, now to be applied to bankruptcies. These standards neither take into consideration differences in the cost of living from region to region, nor do they ascribe rational expenses for the use of individual families. In my view, these rigid standards will deprive children and families of reasonably necessary living expenses.

While moving child support to a first priority among unsecured creditors in chapter 7 sounds good, it is virtually meaningless, however.

Listen to this. Fewer than 4 percent of chapter 7 debtors have anything to distribute to unsecured creditors. Listen to that again. Fewer than 4 percent of chapter 7 debtors have anything to distribute to unsecured creditors. That is to say 96 percent of these debtors have nothing to give out. So saying under chapter 7, ''you are first in line,'' means absolutely nothing except to 4 percent of those debtors. First in line when there is nothing means nothing. This is not a protection for women and families. It sounds good, but it is totally hollow when it comes to seeing to these children and these families whom, for 100 years, we have done a better job of protecting.

Additionally, because the means test increases the potential for dismissing chapter 7 cases, this bill channels many debtors into the 5-year, chapter 13 repayment plans, even though we know for a fact that two-thirds of such plans fail today. What will families live on during this time? What are proponents of this legislation going to do, go back to the time of Charles Dickens or debtors prisons?

Under chapter 13, the bill would require that larger payments be made to credit card companies. As a result, payments of past-due child support would be made in smaller amounts and over a longer period of time, thus increasing the risk that children will not receive the support they need and the full debt would never be paid.

Mothers and children would be in direct competition with credit card companies employing well-financed collection departments. How do you think mothers and children will fare when it comes down to competing? It is hard enough under the present system for these people to collect the $95 billion they are owed in one single year in child support, when they now are going to also have to compete, under chapter 13, with credit card companies who are well heeled and in a far better position financially, with teams of lawyers, to go after these debtors. I do not believe anybody could rationally conclude that a mother raising two or three children on her own, with limited resources, is going to be able to hire the lawyers to compete with the credit card companies going after the debtor husbands in these cases.

Those are the practical realities. So for children and families, this bill makes life a lot worse because of exactly what I have explained: we are moving people out of chapter 7, where there was nothing much to give anyway, into chapter 13, where it becomes far easier for larger amounts of these resources, larger payments, to be made to the credit card companies.

I am very concerned about the provisions of the legislation that make certain credit card debt nondischargeable. While the family support provisions added to this legislation are positive improvements, they have not cured the problems caused by the other provisions of the bill. In fact, they are negated by them, in my view. These are provisions that give far greater collection rights to the credit card lenders and fewer, in my view, to families and children.

This bill elevates credit card debt to a presumed nondischargeable status. If a debtor purchases items or services on credit from a single creditor within 90 days of bankruptcy, and such items exceed $500 in value, these items would be presumed luxuries.

Listen to that again. Within 90 days, if you make purchases from a single creditor exceeding $500, they are presumed luxuries—in 90 days—3 months.

Again, if you are a single parent with two or three kids, over 90 days $500 is not a huge amount when you are talking about groceries or other essentials. Over a 3-month period—stretch it out and do the math—$500 over 90 days is really, in 21st century dollars, even if you go to the best discount stores, not going to be enough to make it. Current law allows up to $1,225 to be discharged within 60 days of bankruptcy. The bill as reported would limit it to $500 within 90 days, as I have said. The amendment I will offer when the time comes to vote on it will allow not $500 but less than $1,200 to $1,000 within 70 days. So it is less than 90, a bit more than 60. It is less than $1,200 under current law but certainly more than $500 to get you to $1,000.

Again, I don't think this is any great luxury. You are trying to meet the needs of your family. To declare them to be luxuries—it doesn't seem a lot to me. Over a 90-day period it is not that hard to spend $501 at Wal-Mart to meet kids' needs. Most would agree such purchases are not luxuries. In 90 days alone, a family with children could exceed $500 on other expenses that arise with children.

My amendment requires creditors to prove at a hearing that such items were not reasonably necessary for the maintenance and support of the debtor and her dependents, shifting the burden to creditors rather than the parents. If the creditor wants to make the case, let them do it, but don't lay the burden for $501 on a single mother with young kids to hire lawyers to go in and make the case these are not luxury items. I shift the burden over to the creditors. If they want to make the case, they can do so.

I don't know what the proponents of this legislation are intending here, other than to protect the credit card companies at the expense of children. If you have $501 of food, medicine, and clothing expenses, and it is incurred within the last 90 days, then you have to go to court and spend money to prove these are not luxuries—food, medicine, and clothing. This point is one I find stunning in its potential implications. By the very fact that you are in bankruptcy court, how are you going to hire a lawyer to go in and prove that $501 was for necessities and not luxuries? We need to be far more practical than that, it seems. To go to Wal-Mart and buy food and clothes for your children, necessities they may need, that is considered a luxury if it is more than $500.

If you are a single woman as a creditor, then you must wait until your ex-husband tries, or does not try, to defend a similar purchase. If he is unsuccessful, there will be less money for him to pay child support.

So on either side of the equation, if you are the woman raising children on your own, either as a debtor or a creditor, this places tremendous burdens on your family. If this section is sustained in the bill, then I urge the President to veto it, which I am told he would not do, but I hope he would. This legislation, regardless of what else is here, I think putting credit card debt ahead of kids is just wrong.

I think all my colleagues are probably familiar with the popular TV ad where a father takes his son to a baseball game, they rack up maybe $100 in costs—tickets, parking, hot dogs, sodas, maybe a popcorn to share and a small souvenir. The tag line in the commercial says: ''Cost of the memory—priceless.''

What the commercial doesn't tell you about is the memory may be priceless, but if the next day that dad is unlucky enough to lose his job, have a heart attack, incur enormous hospital expenses without health insurance, and can't make his minimum payments on time, the credit card companies are only too happy to turn priceless into pricey. Unfortunately, pricey for the family with finance charges, overcharges, penalty fees, and other means, can turn a dream into a nightmare.

This bill allows families to take a backseat to lenders, if lenders say their claims are secured by the debtors' property. For the first time in over 100 years, we have allowed these heretofore unsecured creditors to get into the bankruptcy courthouse. Currently, child and family support, taxes, and student loans are not dischargeable debts. For the first time in a century, the proposed legislation before us would bring into this unique category these other creditors—i.e., credit card companies—which will make the competition for scarce assets that much more fierce. These creditors have historically been unsecured because they have received the benefit of high interest and finance charges. Now they are becoming effectively secured creditors.

With all of these concerns in mind, the amendment I am offering this afternoon seeks to address some of these problems. I hope these efforts will win broad bipartisan support. I have been terribly disappointed that there has been no willingness to even talk about some of these amendments. I don't know why we can't do this. This is not the end of the session. We are only in the month of March.

This is an important bill. I understand that. But it is going to have huge implications for years to come if we don't sit down and listen to each other carefully to try to work out some of these matters so we can put a bill together. Yes, it may require a conference; it may require some negotiation. But isn't that a wiser course to follow than to rubberstamp a proposal because the other body doesn't want to sit down in conference on the bankruptcy bill, particularly when we are talking again about the most vulnerable in our society; that is, our children?

Again, I emphasize what I said at the outset. We are talking about the innocents here. I don't want them to fall prey to the claim that people taking bankruptcy are guilty of something somehow.

Again, if you accept the notion that most people who file bankruptcy are not doing so lightly, I don't know of anyone who likes to admit they are so messed up in every way possible that they put themselves in that situation. Are there people who take advantage? Yes. I know that is true. As we try to cure that problem, let us not create more problems for those who through no fault of their own find themselves in that situation; and, even worse yet, those who are completely innocent who find themselves so disadvantaged that the ability of parents—particularly single women raising children—to find it harder and harder to collect those child support payments they desperately need to lift these children out of poverty, to make ends meet in the 21st century, with companies going bankrupt every day. We must see to it that those families who are already going through an awful lot don't find themselves going through even more.

This amendment is a modest attempt to readjust this section of the bill, to inject some practicalities, to say that as we consider the rights of credit card companies we are not going to forget the rights of children, so we will put some reasonable ceiling in here to make it possible for everyone to be a winner, so people can go to bankruptcy court to get themselves out of debt, get on their feet again, see to it that creditors are going to have an opportunity to collect the obligations that are owed them, and not penalize those who ought not be a part of this debate in any consideration.

I urge my colleagues to think about these amendments. I know it means changing the bill. I know it may mean going to a conference for a day or two. But I urge my colleagues to at least look at these proposals. If they make some sense, as some of them do, can't we sit down and try to resolve some before we go ahead and pass a bill that I think many may regret down the road when we consider the implications for those who are going to be adversely affected by this legislation?

I also would like to add as part of the RECORD a couple of pieces of correspondence that speak to these particular issues. One is from the National Women's Law Center, a letter dated February 23, 2005. I will not read the whole letter. Let me read a couple of paragraphs, because they go to the heart of what I am talking about here.

The letter reads:

S. 256 would make it harder for women to access the bankruptcy system because the means test requires additional paperwork of even the poorest filers, harder for women to save their homes, cars and essential household items through the bankruptcy process and harder for women to meet their children's needs after bankruptcy because many more debts would survive. The bill also would put women owed child or spousal support who are bankruptcy creditors at a disadvantage by increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others. The bill would set up an intense competition for scarce resources between mothers and children owed support and these commercial creditors during and after bankruptcy.

The letter goes on.

I ask unanimous consent that the letter from the National Women's Law Center be printed in the RECORD.

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

NATIONAL WOMEN'S LAW CENTER,
Washington, DC, February 23, 2005.

Re oppose S. 256, the Bankruptcy Act of 2005.

DEAR SENATOR: The National Women's Law Center is writing to urge you to oppose S. 256, a bankruptcy bill that is harsh on economically vulnerable women and their families, but that fails to address serious abuses of the bankruptcy system by perpetrators of violence against patients and health care professionals at women's health care clinics.

This bill would inflict additional hardship on over one million economically vulnerable women and families who are affected by the bankruptcy system each year: those forced into bankruptcy because of job loss, medical emergency, or family breakup—factors which account for nine out of ten filings—and women who are owed child or spousal support by men who file for bankruptcy. Contrary to the claims of some proponents of the bill, low- and moderate-income filers—who are disproportionately women—are not protected from most of its harsh provisions, and mothers owed child or spousal support are not protected from increased competition from credit card companies and other commercial creditors during and after bankruptcy that will make it harder for them to collect support.

The bill would make it more difficult for women facing financial crises to regain their economic stability through the bankruptcy process. S. 256 would make it harder for women to access the bankruptcy system, because the means test requires additional paperwork of even the poorest filers; harder for women to save their homes, cars, and essential household items through the bankruptcy process; and harder for women to meet their children's needs after bankruptcy because many more debts would survive.

The bill also would put women owed child or spousal support who are bankruptcy creditors at a disadvantage. By increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others, the bill would set up an intensified competition for scarce resources between mothers and children owed support and these commercial creditors during and after bankruptcy. The domestic support provisions in the bill may have been intended to protect the interests of mothers and children; unfortunately, they fail to do so.

Moving child support to first priority among unsecured creditors in Chapter 7 sounds good, but is virtually meaningless; even today, with no means test limiting access to Chapter 7, fewer than four percent of Chapter 7 debtors have anything to distribute to unsecured creditors. In Chapter 13, the bill would require that larger payments be made to many commercial creditors; as a result, payments of past-due child support would have to be made in smaller amounts and over a longer period of time, increasing the risk that child support debts will not be paid in full. And, when the bankruptcy process is over, women and children owed support would face increased competition from commercial creditors. Under current law, child and spousal support are among the few debts that survive bankruptcy; under this bill, many additional debts would survive. But once the bankruptcy process is over, the priorities that apply during bankruptcy have no meaning or effect. Women and children owed support would be in direct competition with the sophisticated collection departments of commercial creditors whose surviving claims would be increased.

At the same time, the bill fails to address real abuses of the bankruptcy system. Perpetrators of violence against patients and health care professionals at women's health clinics have engaged in concerted efforts to use the bankruptcy system to evade responsibility for their illegal actions. This bill does nothing to curb this abuse.

The bill is profoundly unfair and unbalanced. Unless there are major changes to S. 256, we urge you to oppose it.

Very truly yours,

NANCY DUFF CAMPBELL,
Co-President.
MARCIA GREENBERGER,
Co-President.
JOAN ENTMACHER,
Vice President and Diretor, Family Economic Security.

Mr. DODD. Mr. President, I want to quote a letter from the Children's Defense Fund, again expressing their concern about these sections of the bill. I will read from this letter as well.

The Children's Defense Fund is writing to urge you to oppose S. 256, the bankruptcy bill, that would hurt many Americans facing financial problems through job loss, divorce, child rearing, lack of medical insurance, or predatory lending practices. This bill would inflict hardship on more than 1 million economically vulnerable women and families who are affected by the bankruptcy system each year. Medical emergency, job loss and family breakup are important factors which account for nine out of ten filing for bankruptcy. The bill would also hurt women who are owed child or spousal support by men who file bankruptcy. The bill would make it far more difficult for women to collect support because credit card companies and other commercial creditors will have greater claims to the debtor's resources during and after bankruptcy. Being first among unsecured creditors in chapter 7 bankruptcy is meaningless when over 95 percent of debtors have no resources to pay unsecured creditors.

In chapter 13, the bill would require larger payments to be made to many commercial creditors resulting in smaller payments to past-due child support over longer periods of time increasing the risk that child support debts will not be paid in full. And after the

bankruptcy is over, more and more debts owed to commercial creditors will survive, and mothers and children owed support are not a match for the collection departments of the commercial credit industry.

S. 256 contains a number of provisions which would have a severe impact on families trying to regain their economic stability through the bankruptcy process.

The letter goes on. Those are pertinent paragraphs when it comes to the amendment which I am offering here today.

I ask unanimous consent that this letter be printed in the RECORD.

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

CHILDREN'S DEFENSE FUND,
March 3, 2005

Re Oppose S. 256, The Bankruptcy Act of 2005.

DEAR SENATORS: The Children's Defense Fund is writing to urge you to oppose S. 256, a bankruptcy bill that would hurt many Americans facing financial problems due to job loss, divorce, child-rearing, lack of medical insurance, or predatory lending practices. This bill would inflict hardship on more than one million economically vulnerable women and families who are affected by the bankruptcy system each year. Medical emergency, job loss or family breakups are factors which account for nine out of ten filings.

The bill would also hurt women who are owed child or spousal support by men who file for bankruptcy. The bill would make it more difficult for mothers to collect support because credit card companies and other commercial creditors will have greater claims to the debtor's resources during and after bankruptcy. Being first among unsecured creditors in Chapter 7 bankruptcy is meaningless when over 95 percent of debtors have no resources to pay unsecured creditors. In Chapter 13, the bill would require larger payments to be made to many commercial creditors, resulting in smaller payments of past-due child support over a longer period of time, increasing the risk that child support debts will not be paid in full. And after the bankruptcy is over, more more debts owed to commercial creditors will survive—and mothers and children owed support are not a match for the collection departments of the commercial credit industry.

S. 256 contains a number of provisions which would have a severe impact on families trying to regain their economic stability through the bankruptcy process. S. 256 would make it harder for women to access the bankruptcy system. Low and moderate income families are not protected from many of the bill's harsh provisions. Parents who desperately need to preserve their homes from foreclosure or prevent their families from being evicted, or keep a car to get a work, would find it more difficult to do so. And, when the bankruptcy process was over, parents already facing economic disadvantage would find it harder to focus their income on reasonable and necessary support for dependent children because many more debts would survive.

Passage of the bankruptcy bill would make it harder for families struck by financial misfortune to get back on track. It would benefit the very profitable credit card industry at the expense of the modest-income families who represent the great majority of these who declare bankruptcy. Congress should not enact reform that puts women and children at greater risk. The bill is profoundly unfair and unbalanced. Unless there are major changes to S. 256, we urge you to oppose it.

Very truly yours,
DEBORAH CUTLER ORTIZ,
Director of Family Income and Jobs.

Mr. DODD. Mr. President, the Association for Children for Enforcement of Support is supporting this amendment and opposes the legislation. The American Association of University Women, American Medical Women's Association, the Business and Professional Women of the United States, the Center for Law and Social Policy, the Center for the Childcare Workforce, Child Welfare League of America, the National Council of Jewish Women, the National Organization for Women, the National Partnership for Women and Families, the YWCA of the United States—all are groups which support the amendment and oppose this legislation.

Again, I realize the hour is late. We are getting closer to passage of this bill. I don't think it is so late, however, not to try to make some modest changes in this legislation that I think would go a long way to providing some relief for families.

Again, this is one of the areas of law that is written into our Constitution. Article I, section 8 of the U.S. Constitution, drafted back in the 18th century, specifically provided and called upon the Congress of the United States to enact bankruptcy laws. To understand why they did so, go back and look at the Federalist Papers. They talked about doing it as an opportunity for people to get back on their feet again. That was the idea—to see to it that creditors could be compensated to the maximum extent possible, but that also those filing for bankruptcy would begin a new chapter in their lives, to get on their feet again.

It seems to me we ought to be trying to do that with this legislation, not only helping the creditors collect what is due them, but simultaneously making it possible for good people to get a fresh start.

If in the process of helping the creditors get paid we make it more difficult for people to get on their feet again, we are lacking the balance which I think we ought to be striking with this bill.

I urge my colleagues not to necessarily rely on what I have said here today, but to review these sections of the bill and ask yourself realistically whether in this day and age the kind of caps we are putting on, kind of forcing people into the chapter 13 category, if we are not exactly undoing what we have done for 100 years to modern bankruptcy laws.

The modern bankruptcy laws put not only families first but they also left them alone. If you were dealing with child support and alimony, once you paid those, or set up a payment schedule, whatever is left over, you dispensed to your creditors, you were not only the first in line, you were the only one in line. This changes that. You can be first in line under this bill, but you are not the only one in line, and other people in line have far more resources and strength to be able to compete for those debtors' funds to compensate these creditors. It puts families at a disadvantage.

There are a lot of other reasons to be concerned about this bill. I know my colleagues care about children. I know they care about families. They want to see these innocents have a chance for a decent life. This bankruptcy bill, if not amended, will make it far more difficult to achieve those goals.

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

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

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. 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. MCCONNELL. Mr. President, I ask consent that at 5:45 today the Senate proceed to a vote on or in relation to the Feingold amendment No. 89, with the time equally divided in the usual form until the vote; provided further that no amendments be in order to the amendment prior to the vote.

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

Mr. MCCONNELL. I ask the action we just took be vitiated. I will wait until Senator DURBIN gets to the floor and I will reoffer the consent agreement.

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

Mr. MCCONNELL. Mr. President, I ask unanimous consent that at 5:45 today the Senate proceed to a vote on or in relation to Feingold amendment No. 89, with the time equally divided in the usual form until the vote; provided further that no amendments be in order to the amendment prior to the vote.

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

Mr. DURBIN. If the majority whip would yield for a question, I have three germane amendments pending. I think others are in the same position, including Senator FEINGOLD. It is my hope to move as quickly as possible to a quick, limited debate, for just very short periods of time, and then to vote on these amendments in an effort to keep the bill moving forward. I ask the Republican whip whether or not there are plans to call any other votes today or early tomorrow.

Mr. MCCONNELL. Mr. President, I might say to my friend from Illinois, we have been reviewing amendments. I am hopeful we can have some discussion between now and the vote about how we proceed from here.

Mr. DURBIN. I thank the Senator.

Mr. MCCONNELL. I yield the floor.

Mr. DURBIN. 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. CRAIG. 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. 89

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. I ask unanimous consent that Senator FEINGOLD have 2 minutes.

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

Mr. FEINGOLD. I thank the Senator from Idaho.

Mr. President, we are about to vote on an amendment that will tell this Nation's small businesses whether we stand with them. This bill includes a number of new restrictions and requirements for small businesses that want to reorganize under chapter 11. These requirements and restrictions for small businesses don't apply to large companies. I was shocked when this came to my attention, but there it is in black and white: Subtitle B, Small Business Bankruptcy Provisions. And these are not provisions to help small businesses as one might expect from a bill that is going through the United States Senate. No, these provisions penalize small businesses. They make it harder to reorganize in order to survive.

These new provisions are entirely unnecessary. There is no crisis in small business bankruptcies. And a new study shows. that most failed attempts at chapter 11 reorganization are concluded within 300 days, which is the hard deadline in the bill. But 40 percent of reorganizations that succeed take longer than 300 days. That means that this bill is going to make some small businesses fail that don't have to. That is an absurd result. Remember the United Air Lines Chapter 11 reorganization is over two years old and it is still going on. Why shouldn't small businesses get that kind of leeway if there is a chance they can pull through?

These provisions haven't received nearly the attention in this body that the portions of the bill that deal with consumer bankruptcies have received. We need to take these provisions out. Doing so won't have any effect on the core provisions of this bill. But it will prevent a real injustice from being done to small businesses. Forcing a small business to liquidate rather than reorganize is bad for creditors, bad for consumers, and bad for small businesses. I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, Chairman GRASSLEY would ask for a no vote, as would Senator HATCH.

The PRESIDING OFFICER. The question is on agreeing to the Feingold amendment No. 89.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 54, nays 59, as follows:

[Rollcall Vote No. 30 Leg.]

YEAS—41

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

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	Johnson	Thune
Collins	Kyl	Vitter
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	

The amendment (No. 89) was rejected.

Mr. FRIST. Mr. President, for the information of our colleagues, we are making great progress on the bill. We are in the cloture period. We will not have further rollcall votes tonight, although we will keep the clock running in the cloture period and we will continue debate over the course of tonight. So we are here. We do encourage people who do want to speak on the bill to come and speak.

Tomorrow morning we will, after discussion on both sides of the aisle with the managers, have a series of stacked rollcall votes in the morning in order to not have rollcall votes tonight. But we are on the bill. The clock will continue to run, and debate should continue. There will be no rollcall votes tonight, stacked votes tomorrow. We would expect to finish this bill in all likelihood sometime tomorrow, late tomorrow.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I ask unanimous consent that the pending amendments be set aside so I may call up amendment No. 62, and then I will ask it be laid aside.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS addressed the Chair.

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

Mr. SESSIONS. Mr. President, will the Senator restate her request?

The PRESIDING OFFICER. The Senator will suspend. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from California (Mrs. BOXER) proposes an amendment numbered 62.

Mr. SESSIONS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Would the Senator propound her unanimous consent request again?

Mrs. BOXER. I think it has already been agreed to.

Mr. SESSIONS. I sought recognition.

The PRESIDING OFFICER. The Chair did not hear the Senator originally; however, precedent allows the Senator to reserve the right to object at this time.

Mr. SESSIONS. Will the Senator restate her unanimous consent? There was noise on the floor, and I just did not hear it.

The PRESIDING OFFICER. The Senator will suspend a moment.

Will the Senator from California restate her request.

Mrs. BOXER. I ask unanimous consent the pending amendment be set aside so I may call up amendment No. 62. It would then be my intent to ask it be laid aside. I believe we have an agreement that I be given 10 minutes in the morning, followed by a vote at a time both sides can agree to.

The PRESIDING OFFICER. Is there objection? The Senator from Alabama.

Mr. SESSIONS. I object at this time, but I would check with our colleagues, and if that is acceptable—I could check that, but I would object at this time.

Mrs. BOXER. Mr. President, I will suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 111 WITHDRAWN

Mr. DURBIN. Mr. President, I ask consent my pending amendment No. 111 be withdrawn.

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

AMENDMENT NO. 62

Mr. DURBIN. Mr. President, I ask unanimous consent the pending amendments be set aside so that Senator BOXER may call up amendment numbered 62.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 62.

Mrs. BOXER. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for the potential disallowance of certain claims)

On page 132, between lines 5 and 6, insert the following:

SEC. 234. DISALLOWANCE OF CLAIM IF BASED ON EXTENSION OF CREDIT TO CERTAIN INDIVIDUALS UNDER 21 YEARS OF AGE.

Title 11, United States Code, as amended by this Act, is further amended by inserting after section 112 the following:

"§ 113. Disallowance of claim if based on extension of credit to certain individuals under 21 years of age

''(a) IN GENERAL.—In making a determination of whether to disallow a claim under this title, the court shall consider if the claim is based upon an extension to an individual of unsecured credit and the factors listed in subsection (b) are present. The factors listed in subsection (b) may be the basis for a disallowance of a claim under this title.

''(b) FACTORS.—The factors under this subsection are the following: if the individual, at the time unsecured credit was extended—

''(1) was under 21 years of age;

''(2) did not have a co-obligor on such unsecured credit who was a parent or spouse of the individual;

''(3) had an income level that was below or at the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))); and

''(4) already had 6 or more unsecured credit cards.''.

Mrs. BOXER. I ask unanimous consent the amendment be set aside.

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

Mrs. BOXER. I thank my colleagues very much.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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 when the Senate resumes the bankruptcy bill tomorrow morning, the Senate begin 10 minutes of debate equally divided on each of the following amendments in the order mentioned below; provided further that following that debate the Senate begin a series of votes on or in relation to the amendments in that same order; provided that no amendment be in order to the amendments prior to the ordered votes. I further ask that there be 2 minutes equally divided for debate between the votes after the first vote and, lastly, that all votes in this sequence after the first vote be limited to 10 minutes in length.

The amendments are Durbin, No. 110; Harkin, No. 66; Boxer, No. 62; Dodd, No. 67.

I further ask unanimous consent that notwithstanding the adjournment of the Senate, all time overnight until the Senate resumes consideration of the bill be counted under the provisions of rule XXII.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. No objection.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant 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. LEAHY. Mr. President, my amendment, cosponsored by my friend and colleague, Senator CANTWELL, would greatly assist the many victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened by summary eviction as a result of filing or bankruptcy. I ask unanimous consent that the text of our amendment be printed in the RECORD after my remarks.

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

(See exhibit 1.)

Mr. LEAHY. The connection between domestic violence, economic abuse, and housing is overwhelming. Women and children who are fleeing domestic violence make up a significant portion of the homeless population. According to the United States Conference of Mayors, 57 percent of cities surveyed identified domestic violence as a primary cause of homelessness.

These women and children are homeless because in their desperate attempt to leave their abusers they find themselves with few, if any, funds with which they can support themselves. Victims of domestic violence have a tough time finding room at emergency homeless or domestic violence shelters, and often fail to find adequate housing because affordable, long-term housing is not available in so many communities. If housing is available there are often long waiting lists. Victims face unique causes of their financial hardships due to the fact that batterers frequently harass their victims at work, and survivors are often fired or cannot maintain steady employment resulting in losing the ability to pay for housing. Faced with the lack of stable housing, finances and services, victims must choose between life with an abusive partner and life on the streets.

Our amendment would provide leniency for women and children who are affected by domestic violence and would, in fact, help victims to move forward and start new lives. Without the threat of losing their housing, women and children who are survivors of domestic violence will not be forced to a situation where they are homeless or returning to their abuser.

This amendment would modify the bankruptcy code to ensure better protection for victims of domestic violence by granting them relief from summary eviction from their rental housing. Relief may be granted only under the condition that the debtors certify under penalty of perjury that they are victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened through eviction. our amendment would not allow families to take advantage of the system, but it will be a life-saver for those who would face danger if they lost their homes.

This amendment is supported by the National Coalition Against Domestic Violence, the National Network To End Domestic Violent and the Family Violence Prevention Fund. I ask unanimous consent to print in the RECORD letters from those groups voicing that support.

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

MARCH 7, 2005.

DEAR SENATOR: As national organizations working to address the varied needs of victims of domestic violence, we urge you to support Senator Leahy's proposed amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, S. 256. This provision is essential for the many victims of domestic violence whose physical well-being or whose children's physical well-being would be threatened by summary eviction as a result of filing for bankruptcy.

Economic abuse is an integral part of domestic violence. Abusers often assert economic control by forbidding their victims from working, giving them little or no access to family finances, or destroying their credit. Many battered women have current or former partners who actively interfere with their efforts to work, harass them at work, threaten them and their children, withhold transportation or childcare, or beat them so severely that they cannot work. These victims are sometimes pushed into filing for bankruptcy as a result of this abuse.

Evicting these victims from their homes not only exacerbates an already difficult situation, but also puts many families in direct danger. On average, it takes six to ten months to secure housing. During this time, victims would be forced to stay at emergency homeless or domestic violence shelters. Unfortunately, those shelters are often full; in 2003, 32% of the requests for shelter by homeless families went unmet due to the lack of emergency shelter beds available. Even when space is available, most shelters limit the length of stay to 30 days.

Faced with this lack of housing and services, victims must choose between life with an abusive partner or life on the streets. Studies indicate that victims of domestic violence often return to their abusers because they cannot find long-term or transitional housing. At the other extreme, more than 50% of homeless women and children are homeless because they are fleeing domestic violence. Once homeless, women are at high risk for experiencing further violence. Many studies have found that 90–100% of homeless women have been physically or sexually assaulted.

The tremendously negative impact of such evictions becomes greater when victims with children are forced out of their homes. Children without a home are in fair or poor health twice as often as other children, and

have higher rates of asthma, ear infections, stomach problems, and speech problems. Homeless children are also more likely to experience mental health problems, such as anxiety, depression, and withdrawal. They are twice as likely to experience hunger, and four times as likely to have delayed development. School-age homeless children face barriers to enrolling and attending school, including transportation problems, residency requirements, inability to obtain previous school records, and lack of clothing and school supplies.

Individuals claiming relief under this provision would be required to testify, under penalty of perjury, that they were victims of domestic violence and that they or their children would be in physical jeopardy if they were evicted. Thus, this amendment will not allow families to take advantage of the system, but will be life-saving for those who would be in danger if they lost their homes.

We urge you to support Senator Leahy's amendment and provide this much needed assistance to domestic violence victims.

Sincerely,

ALLISON RANDALL,
National Network to End Domestic Violence.
JILL MORRIS,
National Coalition Against Domestic Violence.
KIERSTEN STEWART,
Family Violence Prevention Fund.

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE,
February 28,2005

Senator PATRICK LEAHY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: It is with great support that I write to you on behalf of the National Coalition Against Domestic Violence and the more than 3,000 local shelter programs that we represent to thank you for your efforts to assist those individuals that are or have been impacted by the vast epidemic of domestic violence. '

Women fleeing domestic violence make up a significant portion of the homeless population. According to The United States Conference of Mayors (December, 1999) 57 percent of cities surveyed identified domestic violence as a primary cause of homelessness. Therefore, amending the bankruptcy code, as proposed in S. 256, with a provision that provides leniency on persons who are affected by domestic violence would, in fact, help victims to move forward and start new lives. Without the threat of losing their housing victims will not be forced to a situation where they are homeless or returning to their abuser.

Victims of domestic violence often cannot find adequate housing. One very important—reason is that affordable, long term housing is not available in their communities. If housing is available there are often long waiting lists or the abuser is able to quickly locate and begin abusing the survivor at her new residence. Secondly, due to the fact that batterers frequently harass their victims at work, survivors are often fired or cannot maintain steady employment resulting in loss ability to pay for housing. Lastly victims of domestic violence are forced to remain in abusive relationships because of financial dependency and the lack of stable housing. The amendment to S. 256 recognizes that victims of domestic violence are in a dangerous situation and should not be forced from housing due their financial difficulties.

We commend you on your efforts to ensure that those who are affected by domestic violence are taken into consideration when the Senate reviews this legislation.

Sincerely,

JILL MORRIS,
Public Policy Director.

Mr. LEAHY. Congress must recognize that victims of domestic violence face dangerous situations and should not be forced from housing due to their financial difficulties. We cannot force women and children who have endured domestic violence from safe spaces that provide the stability needed to make a new life.

EXHIBIT 1

(Purpose: To protect victims of domestic violence who file for bankruptcy from summary eviction if their physical well-being is threatened)

On page 156, line 18, insert '', unless the debtor certifies under penalty of perjury that the debtor is a victim of domestic violence whose physical well-being or whose children's physical well-being would be threatened if relief from the stay is granted'' before the semicolon.

REGULATING CREDIT CARDS

Mrs. FEINSTEIN. I appreciate the willingness of the chairman and ranking member of the Banking Committee to work with Senators KYL, BROWNBACK, and me on this important issue. And I understand that the Banking Committee has an interest in regulating credit cards.

I would like to state here, for the record, the key points of the agreement that we have arrived at:

Senators SHELBY and SARBANES have agreed to hold a hearing within 6 months on the substance of the amendment to the Bankruptcy Bill that Senator KYL, BROWNBACK, and I offered, on increasing notice to credit card holders who pay only their minimum monthly payments. I understand that this hearing will address a set of issues relating to credit cards and consumer rights. However, I also understand that Senators SHELBY and SARBANES will ensure that the substance of agreement, will be directly considered, and will be an area of focus, during that hearing, and that I will be afforded the opportunity to testify.

I understand that Senators SHELBY and SARBANES will work with me, with Senator KYL, and with members of the Banking Committee to ensure that this issue and my bill are carefully considered. My bill would give those consumers who make only the minimum required payments for 6 months detailed notice about the interest and length of time that it will take them to pay their own individual debt and interest.

Because the chairman and ranking member of the Banking Committee agree to take these actions, I will agree to withdraw my amendment. Do Senators SHELBY and SARBANES agree?

Mr. SHELBY. I absolutely agree with Senator FEINSTEIN and look forward to working with the Senator.

I say to Senator SARBANES, through the course of the debate on the bankruptcy bill it has become clear that there are many Senators who have concerns about numerous aspects of the credit card industry.

I want to indicate for the record that I share many of these concerns. Furthermore, I want to point out that I am aware of his particular concerns as well as those of Senators KYL and FEINSTEIN.

Mr. SARBANES. I thank Chairman SHELBY and Senator FEINSTEIN. I appreciate their interest in this matter and believe these are serious issues that merit further attention.

Mr. SHELBY. I fully agree and therefore I am willing to commit to holding a hearing in the Banking Committee to examine the practices within the credit card industry. I believe it is our responsibility to develop a complete record on these matters so that we can make informed judgments as to whether we need to take any specific actions.

I look forward to obtaining input from Senator SARBANES and from Senators KYL and FEINSTEIN in putting together this hearing.

Mr. SARBANES. I thank Chairman SHELBY for his leadership on this issue. I look forward to working with the Senator on developing a hearing at which the Banking Committee will receive testimony on credit care disclosures and other practices. A number of Senators have raised significant issues regarding the credit card industry and I appreciate the Senator's willingness to examine them and hear all interested Senators.

Mr. SHELBY. I agree.

Mr. SARBANES. I will support the Chairman's efforts.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

COMMEMORATING THE 60TH ANNIVERSARY OF THE BATTLE OF IWO JIMA

Mrs. DOLE. Mr. President; this month marks the 60th anniversary of the victory at Iwo Jima. That battle is remembered as one of the bloodiest in Marine Corps history. Approximately 70,000 American and 22,000 Japanese troops engaged in a month long battle for the Pacific Island that was critical to the air bombardment of mainland Japan. The heroic achievements of our nation's warriors throughout this treacherous battle attest to the courage and character not only of the brave men who fought there, but of our nation as a whole.

The island of Iwo Jima consists of coarse volcanic sand that impeded the movement of men and machines as they struggled up the beach. Unable to dig fighting holes, the Marines were