

Mr. President, most Americans carefully manage their finances, pay their bills, and never face the prospect of bankruptcy, yet we rarely hear about them when bankruptcy reform is debated. These are the people who ultimately bear the cost when others seek bankruptcy protection. They pay in terms of higher interest rates and higher prices on goods and services. This bankruptcy tax costs the average household more than \$400 a year.

There will always be a limited number of people who unexpectedly experience some catastrophe in their lives—maybe a death or divorce, or a serious illness—that throws their finances into chaos. That is why we accept as a given that society will bear some of the cost of bankruptcy, and why we maintain access to bankruptcy relief for those who truly need it. No one suggests closing off bankruptcy as an option for those who are in truly dire straits.

A line does need to be drawn, however, when people, particularly those with above-average incomes who have the means and ability to repay their debts, nevertheless seek to have those debts erased in bankruptcy. This is happening more and more often, and unless we get the problem in check, it is going to wreak havoc.

Mr. President, there is nothing fair about forcing a single mother, who is already struggling to pay her own family's bills, to pay more merely because someone who can repay his or her debts prefers to escape them in bankruptcy. There is nothing fair about forcing young families or seniors on fixed incomes to pay more so that someone can walk away from his or her debts as a matter of convenience or financial planning.

Few bills so clearly protect the interests of consumers, yet the bankruptcy-reform bill does have its critics. Much of the criticism, I think, misses the mark. Two professors of law, Todd Zywicki and James White, wrote to the Judiciary Committee recently about some of the claims that have been made, and what they had to say is worthy of the consideration of every member of this body.

I ask Senators to join me in supporting the bipartisan bankruptcy-reform bill, and I ask unanimous consent that the professors' letter be printed in the RECORD.

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

GEORGE MASON UNIVERSITY  
SCHOOL OF LAW,

*Arlington, VA, September 15, 1999.*

Hon. ORRIN HATCH,  
Chairman, Committee on the Judiciary, U.S.  
Senate, Washington, DC

Hon. PATRICK LEAHY,  
Ranking Member, Committee on the Judiciary,  
U.S. Senate, Washington, DC

Re: The Bankruptcy Reform Act of 1999 (S. 625)

DEAR SENATORS HATCH AND LEAHY: We are writing to express our support for the con-

sumer bankruptcy provisions of bill S. 625, the Bankruptcy Reform Act of 1999 (the "Bill"). S. 625 provides for balanced bipartisan bankruptcy reform that preserves the integrity of the bankruptcy system for those who need it, but reduces abuse by those who do not. In expressing our support for bankruptcy reform, we share the view of 217 Republican Representatives and 96 Democratic Representatives who passed a similar bill earlier this year by an overwhelming 313-108 veto-proof majority.

In an era of unprecedented economic prosperity, growth, and low unemployment, 1.4 million Americans filed bankruptcy last year, costing creditors approximately \$40 billion. Smaller creditors suffer the most from a runaway bankruptcy system, as they tend to have the narrowest margins and the least ability to spread those losses among their customers. Support for the Bill comes from creditors across the full spectrum of creditors, but small creditors, such as small retailers and credit unions, are among the strongest supporters of bankruptcy reform.

Like all other business expenses, when creditors are unable to collect debts because of bankruptcy, some of those losses are passed on to responsible Americans who live up to their financial obligations. Every phone bill, electric bill, mortgage, furniture purchase, medical bill, and car loan contains an implicit bankruptcy "tax" that the rest of us pay to subsidize those who do not pay their bills. We all pay for bankruptcy abuse in higher down payments, higher interest rates, and higher costs for goods and services. It is estimated that by making high-income debtors repay what they can, the Bill will save \$3 billion a year, some of which will be passed on to financially-responsible Americans.

The Bill will also reinforce the lesson that bankruptcy is a moral as well as an economic decision. Filing bankruptcy reflects a decision to break a promise made to reciprocate a benefit bestowed upon you. The moral element of bankruptcy is reflected in the observation that the English word "credit" comes from the Latin word for "trust." Parents seek to teach their children values of personal and financial responsibility, and promise-keeping and reciprocity provide the foundation of a free economy and healthy civil society. Regrettably, the personal shame and social stigma that once restrained opportunistic bankruptcy filings has declined substantially in recent years. We have "defined bankruptcy deviancy downward" such that it has become a convenient financial planning tool, rather than a decision freighted with moral and social significance. Requiring those who can to repay some of their debts as a condition for bankruptcy relief sends an important signal that bankruptcy is a serious act that has moral as well as economic consequences. Moreover, reducing the number of strategic bankruptcies will reduce the bankruptcy tax paid by every American family on goods and services, giving them more money for groceries, vacations, and educational expenses.

It has been claimed by some that the Bill would negatively impact the ability of divorced spouses to collect spousal and child support. This claim is based on vague, speculative, and inaccurate accusations about how the nondischargeability of certain debts will impact post-petition efforts to collect these obligations. In contrast to these speculative accusations, the Bill offers concrete assistance to non-intact families in several ways. Among its numerous provisions protecting the rights of former spouses and children are

the following protections: (1) Extends the scope of nondischargeability of spousal support obligations to make nondischargeable certain property settlement, (2) exempts state child support collection authorities from the reach of the automatic stay, (3) elevates the priority level of child support to first priority, (4) makes exempt property available for the enforcement of domestic and child support obligations. These speculative claims about the negative effects of the bill appear to be simply a concerted effort by the Bill's opponents to distract attention from the real reforms and protections included in the bill.

Moreover, the Bill's provisions on credit card nondischargeability merely rationalizes some exceptions to discharge and closes loopholes in the current law relating to the misuse of credit cards. Given this modest aim of simply closing loopholes in the already-existing exception to discharge for credit card fraud, it is difficult to see how this reform could have more than a trivial effect on collection of spousal support payments. Nor have the Bill's opponents supplied any details about the size of this purported effect. Assuming the effect is non-trivial, it is also not unique to make certain debts nondischargeable on the basis of public policy. Current law already makes a multiple of exceptions to discharge, including such things as tax obligations, fraudulently incurred debts, student loans, and victims of drunk drivers. As a result, the bill would no more "pit" postpetition child support obligations against credit card issuers than current law "pits" child support obligations against the victims of drunk drivers, the victims of fraud, student loan obligations, or taxes obligations. Indeed, the burden on a debtor from nondischargeable credit card debts will be substantially smaller than the financial burden on debtor from the inability to discharge fraud liabilities, tax liabilities, student loan debts, and drunk-driving judgments. That opponents of the Bill have instead singled-out credit card issuers for criticism says more about their desire to demonize the credit card industry and less about their commitment to protecting women and children or to real bankruptcy reform.

The Bill establishes a much-needed system of means-testing to force high-income debtors who can repay a substantial portion of their debts without significant hardship to do so. Under current law, there are few checks on high-income debtors seeking to walk away from their debts and few safeguards to prevent bankruptcy fraud. Current law requires a case-by-case investigation that turns on little more than the personal predilections of the judge. This chaotic system mocks the rule of law, and has resulted in unfairness and inequality for debtors and creditors alike. The arbitrary nature of the process has also undermined public confidence in the fairness and efficiency of the consumer bankruptcy system.

The Bill narrows the judge's discretion by establishing a presumption of abuse where a high-income debtor has the ability to repay a substantial portion of his debts, as measured by an objective standard. At the same time, the judge will retain discretion to override this presumption in cases of hardship. Means-testing is not a panacea for all of the ills of the bankruptcy system. But by focusing judicial discretion on the existence of real hardship and reducing procedural hurdles to challenging abuse, the Bill's reforms will vindicate the rule of law and reduce abuse.

The Bill also targets a whole range of other abuses of the bankruptcy system, including such things as the use of "fractional

interests' to prevent legitimate foreclosures and abuse of the cramdown provisions of the Code by filing bankruptcy simply to strip down the value of a secured creditor's claim. The Bill also eliminated abuse of unlimited homestead exemptions, a reform advocated by even the Bill's critics. Contrary to the selective outrage of its critics, however, the Bill does not limit itself to reducing abuse of the homestead exemption but takes a comprehensive approach to rooting out all forms of bankruptcy abuse.

In contrast to the broad-based support for the Bill, opposition primarily has come from one isolated corner—lawyers. Certainly the opposition of some lawyers is based on sincere, albeit mistaken, beliefs about the content and impact of the legislation. But it is ironic that bankruptcy lawyers have been quick to question the motives of creditors in seeking reform, while remaining slow to acknowledge their own stake in opposing reform. James Shepard, a member of the National Bankruptcy Review Commission, estimates that bankruptcy is now a \$5 billion a year industry for lawyers and others. By reducing filings among high-income filers and reducing the cost of bankruptcy cases by making them more predictable and less expensive, means-testing will reduce both the volume and expense of bankruptcy cases. The Bill also will reduce bankruptcy filings by requiring bankruptcy lawyers to inform their clients of availability of non-bankruptcy alternatives, such as credit counseling, and by cracking down on bankruptcy "mills" that mass-produce bankruptcy petitions with little regard to the welfare of their clients. Put simply, more bankruptcies means more money for bankruptcy lawyers, and fewer bankruptcies means less money for bankruptcy lawyers. Also to the dismay of bankruptcy lawyers, the Bill elevates child support obligations to the first administrative priority—a position currently occupied by attorneys' fees obligations. Efforts in the bankruptcy bar to downplay the importance of this protection for divorced mothers appear to be little more than a cynical effort to hid the self-interest of bankruptcy lawyers behind the skirts of divorced mothers.

Balanced bankruptcy reform preserves the protection of the bankruptcy system for those who need it, while limiting abuse by those who are preying on that generosity simply to evade their financial responsibilities. This Bill brings balance to a consumer bankruptcy system that has become a tool for rich and savvy debtors to evade their financial responsibilities. America has one of the most charitable and forgiving bankruptcy systems in the world and many of those who file bankruptcy truly need it as a consequence of personal trouble. But too many people today are preying on our charity and using the bankruptcy system not because they need it, but simply to evade their responsibilities or to maintain an unrealistic and extravagant lifestyle at the expense of those who live responsibly. Ignoring rampant abuse undermines public support for the bankruptcy system generally, which will eventually hurt those who legitimately need bankruptcy relief. Now is the time to fix the bankruptcy system before more drastic reforms are needed later.

Respectfully yours,

TODD J. ZYWICKI,  
*Assistant Professor of  
Law, George Mason  
University School of  
Law.*

JAMES J. WHITE,  
*Robert A. Sullivan,  
Professor of Law,*

*University of Michi-  
gan Law School.*

#### THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, September 27, 1999, the Federal debt stood at \$5,641,247,753,162.35 (Five trillion, six hundred forty-one billion, two hundred forty-seven million, seven hundred fifty-three thousand, one hundred sixty-two dollars and thirty-five cents).

Five years ago, September 27, 1994, the Federal debt stood at \$4,670,106,000,000 (Four trillion, six hundred seventy billion, one hundred six million).

Ten years ago, September 27, 1989, the Federal debt stood at \$2,843,044,000,000 (Two trillion, eight hundred forty-three billion, forty-four million).

Fifteen years ago, September 27, 1984, the Federal debt stood at \$1,570,251,000,000 (One trillion, five hundred seventy billion, two hundred fifty-one million).

Twenty-five years ago, September 27, 1974, the Federal debt stood at \$481,717,000,000 (Four hundred eighty-one billion, seven hundred seventeen million) which reflects a debt increase of more than \$5 trillion—\$5,159,530,753,162.35 (Five trillion, one hundred fifty-nine billion, five hundred thirty million, seven hundred fifty-three thousand, one hundred sixty-two dollars and thirty-five cents) during the past 25 years.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

##### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

A message from the House of Representatives, received during the adjournment of the Senate, announcing that the House has agreed to the report of committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2605) making appropriations for energy and water development of fiscal year ending September 30, 2000, and for other purposes.

At 10:45 a.m., a message from the House of Representatives, delivered by

Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 293. An act to direct the Secretaries of Agriculture and Interior and to convey certain lands in San Juan County, New Mexico, to San Juan College.

S. 944. An act to amend Public Law 105-188 to provide for the mineral leasing of certain Indian lands in Oklahoma.

S. 1072. An act to make certain technical and other corrections relating to the Centennial of Flight Commemoration Act (36 U.S.C. 143 note; 112 note; 112 Stat. 3486 et seq.).

S. 1637. An act to extend through the end of the current fiscal year certain expiring Federal Aviation Administration authorizations.

At 2:26 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 202. An act to restructure the financing for assisted housing for senior citizens and otherwise provide for the preservation of such housing in the 21st Century, and for other purposes.

H.R. 717. An act to amend title 49, United States Code, to regulate overflights of national parks, and for other purposes.

H.R. 1934. An act to amend the Marine Mammal Protection Act of 1972 to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program.

H.R. 2392. An act to amend the Small Business Act to extend the authorization for the Small Business Innovation research Program, and for other purposes.

H.R. 2841. An act to amend the Revised Organic Act of the Virgin Islands to provide for greater fiscal autonomy consistent with other United States jurisdictions, and for other purposes.

H.R. 2942. An act to extend for 6 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted.

H.J. Res. 68. Joint resolution making continuing appropriations for the fiscal year 2000, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 140. Concurrent resolution expressing the sense of the Congress that Haiti should conduct free, fair, transparent, and peaceful elections, and for other purposes.

H. Con. Res. 187. Concurrent resolution expressing the sense of the Congress regarding the European Council noise rule affecting hushkitted and reengineered aircraft.

The message further announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 323. An act to redesignate the Black Canyon of the Gunnison National Monument as a national park and establish the Gunnison Gorge National Conservation Area, and for other purposes.

The message also announced that pursuant to section 1 of the Act to create a Library of Congress Trust Fund Board (2 U.S.C. 154), as amended by section 1 of Public Law 102-246, the Speaker reappoints the following member on