large or petty—never give in except to convictions of honor and good sense.

Legislation to help families help themselves make good sense.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. First of all, I thank Senator GRASSLEY. I very much appreciate his effort, with Senator KENNEDY. He does not give in, especially when it is a matter of principle to him. I thank him for his good work.

BANKRUPTCY REFORM ACT CONFERENCE REPORT

Mr. WELLSTONE. Mr. President, as of today, we are scheduled to have a cloture vote tomorrow. It is going to be on the bankruptcy conference report. One would think that in the final days of this Congress—of this Senate—we actually would be talking about debating and passing legislation that would promote the economic security of families in our country.

We could focus on health security for families. We could focus on raising the minimum wage. We could focus on affordable child care. We could focus on affordable housing. We could focus on reauthorizing the Elementary and Secondary Education Act. Thank God people in the country are so focused on a good education for their children or their grandchildren.

Instead, we are spending our final days debating an unjust and imbalanced bankruptcy bill which is entirely for the benefit of big banks and the credit card companies. In one way, I am very sad to say this piece of legislation is truly representative of the 106th Congress. It is an anti-consumer, give-away-to-big-business bill, in a Congress which has been dominated by special interest legislation. And it is representative of the 106th Congress in another way, too: It represents distorted priorities. We could be doing so much to enhance and support ordinary citizens in our country. Instead, we now have this legislation before us.

I want Senators to know, if they are watching, I will, as they come to the floor, interrupt my remarks so others can speak in opposition. We have a lot of ground to cover. We intend to cover that ground because this piece of legislation deserves scrutiny. It should be held up to the light of day so citizens in this country can see what an ill-made, mishandled attempt this piece of legislation is. Other Senators need to understand what bad legislation this is, how terrible its impact will be on America's most powerless families, and what a complete giveaway it is to banks, credit card companies, and other powerful interests.

This is a worse bill than the bill we voted on earlier in the Senate. It is important for colleagues to understand that not only is this a worse piece of legislation, we had a provision in the bill that passed the Senate—albeit a flawed bill—the Kohl amendment, which said that while we are punishing low- and moderate-income people, families that have gone under because of bankruptcy, in 40 percent or 50 percent of the cases because of medical bills, you certainly don't want to enable millionaires to basically buy million-dollar homes in several States and in that way shield themselves from any liability. That provision was taken out. That is reason enough for Senators to vote against this bill.

In addition, Senator SCHUMER had a provision that said, when people are breaking the law and blocking people from being able to go to family planning clinics, they should not be able to shield themselves from legal expenses and other expenses by not being held liable when it comes to bankruptcy. The Schumer provision was taken out.

If that is not enough for Senators, the way in which the majority leader has advanced this bill makes a mockery out of the legislative process. If we love this institution and we believe in an open, public, and accountable legislative and political process, then I don't see how we can support taking a State Department conference report—I call it the ''invasion of the body snatchers''—completely gutting that so there is not a word about the State Department any longer and, instead, putting in this bankruptcy bill, far worse than the bill passed by the Senate.

I see Senator DURBIN on the floor. I can conclude in 5 minutes, if he is here to speak on this.

I will summarize reasons for opposing this conference report and then come back a little later on and develop each of these arguments.

First, the legislation rests on faulty premises. The bill addresses a crisis that does not exist. Increased filings are being used as an excuse to harshly restrict bankruptcy protection, but the filings have actually fallen sharply in the last 2 years. Additionally, the bill is based on the myth that the stigma of bankruptcy has declined. Not true. I will develop that argument later on.

Second, abusive filers are a tiny minority. Bill proponents cite the need to curb ''abusive filings'' as a reason to harshly restrict bankruptcy protection, but the American Bankruptcy Institute found that only 3 percent of chapter 7 filers could have paid back more of their debt. Even bill supporters acknowledge that, at most, 10 to 13 percent of the filers are abusive.

Third, the conference report falls heaviest on those who are most vulnerable. The harsh restrictions in this legislation will make bankruptcy less protective, more complicated, and expensive to file. This will make it much more difficult for low- and moderate-income citizens to have any protection. Unfortunately, the means tests and safe harbor will not shield from the majority of these provisions and have been written in such a way that they will capture many debtors who truly have no ability to significantly pay off this debt and therefore will be in servitude for the rest of their lives.

Fourth of all, the bankruptcy code is a critical safety net for America's middle class. Low- and moderate-income families, especially single parent families, are those who are most in need to make a fresh start—the fresh start provided by bankruptcy protection. The bill will make it very difficult for these families to get out of crushing debt. Again, in 40 percent of the cases, these are families who have gone under because of a medical bill.

Fifth of all, the banking and credit card industry gets a free ride. The bill as drafted gives a free ride to banks and credit card companies that deserve much of the claim for the bankruptcy filings in the first place, and the lenders should not be rewarded for this reckless lending.

Sixth of all, this legislation actually might increase the number of bankruptcies and defaults. Several economists have suggested that restricting access to bankruptcy protection will actually increase the number of filings and defaults because banks and these credit card companies will be even more willing to lend money to marginal candidates.

Seventh of all, the conference report, again, is worse than the Senate bill. We had a very reasonable provision; It was the Kohl amendment, which said, if you are going to go after women, and go after working families, and go after low- and moderate-income people, and go after families who are in debt because of a medical bill that is putting them under, then at least make sure you are not going to have wealthy Americans who are going to be able to go to several States and buy homes worth millions of dollars and shield themselves from any liability. That provision is knocked out.

This is a worse bill than that passed in the Senate. The Schumer amendment, again, said if people are blocking people from family planning services, they have broken the law; they ought not to be able to shield expenses they incurred from liability when it comes to bankruptcy. The Schumer amendment was taken out.

Finally, I say this one more time. This is a larger issue than bankruptcy reform. It is a question of the fundamental integrity of the Senate as a legislative body. Not one provision of the original State Department authorization bill, aside from the bill number, remains part of this legislation. To replace in totality a piece of legislation with a wholly new and unrelated bill in conference takes the Congress one step closer to a virtual tricameral legislature—House, Senate, and conference committee. If you believe in the integrity of this legislative process, and if you believe we all ought to be in a position to be good legislators, you should vote against this cloture motion on those grounds alone.

I conclude this way. Other colleagues are on the floor. I will develop these arguments later on. At one point in time, the argument was suggested that only a tiny minority opposed this bill. Well, when I look at the opposition of labor unions, and I look at the opposition of every single consumer organization, and I look at the opposition from women and children's groups, and I look at the strong opposition from the civil rights community and a good part of the religious community, and when I see letters signed by bankruptcy professors, the academic community, judges, all the people who know this system well, who say this piece of legislation is egregious—it is one sided: it is imbalanced; it is unjust; it is too harsh—I realize that this piece of legislation should be stopped. I hope that tomorrow Senators, Democrats and Republicans, will oppose this on substantive grounds and also on the basis of the way in which this has been done. The way in which this has been done at the very end of this session is an affront to the integrity of this process. No Senator should vote for cloture who believes in an open, honest process with real integrity.

Before I launch into my first point, Mr. President, I'd like to observe that in July my friend from Iowa, the author of this bill, referred to the opposition to this bill as the ''radical fringe.'' Well, I'm pretty proud of the company I'm keeping no matter now dismissive my colleague. Because you know what? The labor unions all oppose this bill. The consumer groups all oppose this bill. The women and children's groups all oppose this bill. The civil rights groups all oppose this bill and the many members of the religious community oppose this bill. Indeed one of the broadest coalitions I have ever seen united together opposes this so-called bankruptcy reform.

I would say to my colleagues, you can tell a lot about a person—or a bill—by who its friends are. But you can also tell a lot about a bill by who its enemies are. The radical fringe? I see millions of working families who have nothing to gain and everything to lose under this legislation.

Now, Mr. President, you have to give the proponents of this bill credit for chutzpah: They still preach the urgent need for this legislation despite the fact that nearly all the evidence points to the contrary. In fact, in the months since the Senate passed bankruptcy reform, any pretense of necessity has evaporated. The number of bankruptcies has fallen steadily over the past year, charge offs on credit card debt are down significantly and delinquencies have fallen to the lowest levels since 1995. Now proponents and opponents agree that nearly all debtors resort to bankruptcy not to game the system but rather as a desperate measure of economic survival and that only a tiny minority of chapter 7 filers—as few as 3 percent—could afford any debt repayment.

And I have to congratulate my friends on another point, because they had almost convinced the Congress and the American public to view bankruptcy as a giant loophole for scam artists instead of a safety net. A key part of this argument is the belief—wholly unsubstantiated as far as any objective observer call tell—that the high number of bankruptcies in the 1990's is a result of a decline in the stigma of bankruptcy. In fact, my friend from Iowa said in July that ''With high numbers of bankruptcies occurring at a time when Americans are earning more, the only logical conclusion is that some people are using bankruptcy as a way out.''

With all due respect, while that has been a common assertion on the part of the bill's proponents that's all it is: an assertion. Virtually nothing backs it up. Indeed it's an assertion that flies in the face of all evidence that bankruptcy remains a deeply embarrassing, difficult and humbling experience for the vast majority of the people who file. I think my colleagues should actually talk to some folks who have filed for bankruptcy. Ask them how it felt to tell their friends and family about what they had to do, ask them how it felt to let down lenders to whom they owed money. Ask them how they felt about telling their employer.

In fact, it's a shame that when a group of my colleagues and I hosted some of the debtors profiled in Time magazine exposé of this legislation—''Soaked by Congress''—the bill's proponents attacked the credibility of the Time article but didn't bother to visit with Charles and Lisa Trapp, or Patricia Blake, or Diana Murray all who came to Washington to explain—from the perspective of people who have been there—what it's like to file for bankruptcy and why they were driven by that extreme.

A review of the academic papers on bankruptcy suggests that the evidence for a decline in the stigma of bankruptcy is slim. This was the conclusion of a September 2000 Congressional Budget Office report entitled ''Personal Bankruptcy: A Literature Review.'' In fact, CBO found some objective evidence that argues that the stigma of bankruptcy is a strong deterrent to filing noting a study that showed that while 18 percent of U.S. households could benefit from filing for bankruptcy, only 0.7 percent did—suggesting that stigma might hold some back.

In the book, ''the Fragile Middle Class'' by Theresa Sullivan, Elizabeth Warren and Jay Westerbrook—all academic bankruptcy experts—the authors argue that the stigma remains:

> Bankruptcy is, in many ways, where middle class values crash into middle class fears. Bankruptcy debtors are unlikely either to feel in charge of their destiny or to feel confident about planning their future. Discharging debts that were honestly incurred seems the antithesis of middle-class morality. Public identification as a bankruptcy debtor is embarrassing at best, devastating at worst. It is certainly not respectable, even in a country with large numbers of bankruptcies, to be bankrupt. Bankruptcy debtors have told us of their efforts to conceal their bankruptcy. Arguments that the stigma attached to bankruptcy has declined are typically made by journalists who are unable to find any bankrupt debtors willing to be interviewed for the record and by prosperous economists who see bankruptcy as a great bargain.

Of course the stigma argument isn't new. As early as the 1920's then Solicitor General of the United States Thomas Thacher argued that Americans were all too comfortable with filing for bankruptcy. Indeed, as David Moss notes in a 1999 American Bankruptcy Law Journal article, quote: ''those who today worry about declining stigma might be surprised to learn that the stigma associated with bankruptcy had, according to some observers, already disappeared by 1967.''

Of course there are other very logical explanations of why the filing rate in the 90's is quite high—they just aren't as convenient for the big banks and credit card industry.

Mr. President, we know why people file for bankruptcy. Bankruptcy is the only solution for families who find their debt and the interest on their debt outstrips their income. The question is, why do families find themselves in those circumstances? And when they do, what do we as a society do to keep those families solvent. Or if we don't help them to remain solvent, how do we at least let them pick up the pieces, get on with their lives, reenter productive society.

That's what this debate is about. That's exactly what's at stake in this debate; the solvency of the middle class.

But, Mr. President, one not-so-small footnote that overshadows this whole debate is the fact that the number of bankruptcy filings have been dropping like a stone for the past 2 years. My colleagues are driving this heartless bill with talk of a bankruptcy ''crisis,'' a dramatic increase in the number of filings, but with all due respect they are trying to scare us with yesterday's ghosts. A study released on September 8 of last year by Professor Lawrence Ausubel of the University of Maryland notes that the peak increase in bankruptcy filings came and went in 1996. In fact, filings in 1998 were barely an increase over 1997 and we now know that there were 112,000 fewer bankruptcies in 1999 that there were in 1998—a nearly

10 percent decline. And the numbers so far have continued the sharp decline in 2000.

We're being led to believe that it's the high number of bankrupts that are driving this legislation. And do you know what? They are, but for the wrong reasons. The credit card companies are counting on the United States Senate to overreact to the number of bankruptcies, they are counting on you to ignore their complicity in the huge debt burdens on most American families, the financial services industry is counting on the Congress to overlook the evidence that the bankruptcy crisis is self correcting. The problem may be abating, but they still want the fix to pad their profits. The high number of people filing for bankruptcy—most of whom have terrible circumstances that force them to do so—are an excuse, not a justification.

Still, regardless of how many people file or why they file, my colleagues continue to maintain that this bill is driven by necessity. To do this they would track more debtors into chapter 13 instead of chapter 7 through the use of a means test. But again, their goal flies in the face of the evidence. First of all, we know through independent studies of those who file for bankruptcy that only about 3 percent of all debtors who file for chapter 7 could afford to pay any of their debts and that in 95 percent of chapter 7 filings there were no meaningful assets to be liquidated to pay back creditors. This is in line with other evidence that nearly all debtors file for bankruptcy do so because of some sudden, drastic economic disruption which it often takes years to recover from.

Bankruptcy does not occur in vacuum. We know that in the vast majority of cases it is a drastic step taken by families in desperate financial circumstances and overburdened by debt. The main income earner may have lost his or her job. There may be sudden illness or a terrible accident requiring medical care. Certainly most Americans have faced a time in their lives where they weren't sure where the next mortgage payment or credit card payment was going to come from, but somehow they scrape by month to month. Still, such families are on the edge of a precipice and any new expense—a severely sick child, a car repair bill—could send a family into financial ruin. Despite the current economic expansion there are far too many working families in this situation. That is the true story behind the high number of bankruptcy filings in recent years and I want to make clear to my colleagues that the evidence shows that the very banks and credit card companies who are pushing this bill have a lot to do with why working families are in this predicament today.

The bankruptcy system is supposed to allow a person to climb back up after they've hit bottom, to have a fresh start. There is no point to continue to punish a person and a family once their resources are over matched by debt. The bankruptcy system allows families to regroup, to focus resources on essentials like their home, transportation and meeting the needs of dependents. Sometimes the only way this can occur is to allow the debtor to be forgiven of some debt, and in most cases this is debt that would never be repaid because of the debtor's financial circumstances.

The sponsors of this measure and the megabucks and credit card companies behind this bill don't like to focus on those situations. They paint a picture of profligate abuse of the bankruptcy system by irresponsible debtors who could pay their debt but simply choose not to. Such people do take advantage of the system, there is no question. But this bill casts a wider net and catches more than just the bankruptcy ''abusers.''

Again, a study done last year by the American Bankruptcy Institute found that only 3 percent of debtors who file under chapter 7—where debtors liquidate assets to repay some debt while the rest of the debtor's unsecured debt is forgiven—would actually have been able to pay more of their debt than they are required to under chapter 7. Even the U.S. Justice Department found that the number of abusive claims was somewhere between 3–13 percent. This means that the number of people filing abusive bankruptcy claims is astonishingly low. But this legislation seeks to channel many more debtors into chapter 13 bankruptcy—where the debtor enters a 3–5 year repayment plan and very little debt is forgiven. Yet in the pursuit of the few, this bill imposes onerous conditions, and ridiculous standards on all bankrupts alike. Additionally, under current law, 67 percent of the debtors in chapter 13 fail to complete their repayment plan often because they did not get enough relief from loans, and because economic difficulties continued. So this legislation would take individuals, the majority of whom desperately need a true fresh start, and force them into a bankruptcy process which two-thirds of debtors already fail to complete successfully. And my colleagues call this reform?

And yet when given the opportunity to target real, proven abuses by wealthy deadbeats and scofflaws, the sponsors took a pass. Again, Mr. President, the very small number of abusive filers are an excuse not a justification for this bill that falls most heavily on those most in need of fresh start relief. This conference report does not match it's rhetoric.

HOW THE BILL HARMS THE VULNERABLE

Mr. President, I want to take some time to talk about the effect this bill will have on low- and middle-class debtors. Remember, nearly all debtors file for bankruptcy are not wealthy scofflaws, but rather are people in desperate economic circumstances who file as a last resort to try and rebuild their finances, and, in many cases, end harassment by their creditors. And in particular I want to remind my colleagues of the May 15, 2000, issue of Time magazine whose cover story on this so-called bankruptcy reform legislation was entitled ''Soaked by Congress.''

The article, written by reporters Dan Bartlett and Jim Steele, is a detailed look at the true picture of who files for bankruptcy in America. You will find it far different from the skewed version being used to justify this legislation. The article carefully documents how low and middle income families—increasingly households headed by single women—will be denied the opportunity of a fresh start if this punitive legislation is enacted. As Brady Williamson, the chairman of the National Bankruptcy Review Commission, notes in the article, the bankruptcy bill would condemn many working families to ''what essentially is a life term in debtor's prison.''

Now proponents of this legislation has tried to refute the Time magazine article. Indeed during these final days of debate you will hear the bill's supporters claim that low and moderate income debtors will be unaffected by this legislation. But colleagues, if you listen carefully to their statements you will hear that they only claim that such debtors will not be affected by the bill's means tests. Not only is that claim demonstratably false—the means test and the safe harbor have been written in a way that will capture many working families who are filing for chapter 7 relief in good faith—but it ignores the vast majority of this legislation which will impose needless hurdles and punitive costs on all families who file for bankruptcy regardless of their income. Nor does the safe harbor apply to any of these provisions.

Now, you might ask why the Congress has chosen to come down so hard on ordinary working folk down on their luck. How is it that this bill is so skewed against their interest and in favor of big banks and credit card companies? Well, maybe that's because these families don't have million dollar lobbyists representing them before Congress. They don't give hundreds of thousands of dollars in soft money to the Democratic and Republican parties. They don't spend their days hanging outside the Senate Chamber waiting to bend a members ear. Unfortunately it looks like the industry got to us first.

They may have lost a job, they may be struggling with a divorce, maybe there are unexpected medical bills. But you know what? They're busy trying to turn their lives around. And I think it's shameful that at the same time this story is unfolding for a million families across America, Congress is poised to make it harder for them to turn it around. Who do we represent?

So Mr. President, I'd like to take a few minutes to explain exactly what the effects of this bill will be on real life debtors—the folks profiled in the Time article. I hope the authors of the bill will come to the floor to debate on these points. There could be the opportunity for some real discussion on an issue that has yet to be addressed by the bill's supporters. Specifically, I challenge them to come to the floor and explain to their colleagues how making bankruptcy relief harder and much more costly to achieve will benefit working families.

CHARLES AND LINDA TRAPP

Charles and Linda Trapp were forced into bankruptcy by medical problems. Their daughter's medical treatment left them with medical debts well over $100,000, as well as a number of credit card debts. Because of her daughter's degenerative condition, Ms. Trapp had to leave her job as a letter carrier about 2 months before the bankruptcy case was filed to manage her daughter's care. Before she left her job, the family's annual income was about $83,000, or about $6,900 per month, so under the bill, close to that amount, about $6,200, the average monthly income for the previous 6 months, would be deemed to be their current monthly income, even though their gross monthly income at the time of filing was only $4,800. Based on this fictitious deemed income, the Trapps would have been presumed to be abusing the Bankruptcy Code, since their allowed expenses under the IRS guidelines and secured debt payments amounted to $5,339. The difference of about $850 per month would have been deemed available to pay unsecured debts and was over the $167 per month triggering a presumption of abuse. The Trapps would have had to submit detailed documentation to rebut this presumption, trying to show that their income should be adjusted downward because of special circumstances and that there was no reasonable alternative to Ms. Trapp leaving her job.

Because their current monthly income, although fictitious, was over the median income, the family would have been subject to motions for abuse filed by creditors, who might argue that Ms. Trapp should not have left her job, and that the Trapps should have tried to pay their debts in chapter 13. They also would not have been protected by the safe harbor. The Trapps would have had to pay their attorney to defend such motions and if they could not have afforded the thousand dollars or more that this would have cost, their case would have been dismissed and they would have received no bankruptcy relief. If they prevailed on the motion, it is very unlikely they could recover attorney's fees from a creditor who brought the motion, since recovery of fees is permitted only if the creditor's motion was frivolous and could not arguably be supported by any reasonable interpretation of the law (a much weaker standard than the original Senate bill). Because the means test is so vague and ambiguous, any creditor could argue that it was simply making a good faith attempt to apply the means test, which after all created a presumption of abuse.

Of course, young Annelise Trapp's medical problems continue and are only getting worse. Under current law, if the Trapps again amass medical and other debts they can't pay, they could seek refuge in chapter 13, where they would be required to pay all that they could afford. Under the new bill, the Trapps could not file a chapter 13 case for five years. Even then, their payments would be determined by the IRS expense standards and they would have to stay in their plan for 5 years, rather than the 3 years required to current law. The time for filing a new chapter 7 would also be increased by the bill from 6 years to 8 years.

LUCY GARCIA

Lucy Garcia was on the verge of eviction from her apartment when she went to her bankruptcy attorney. As described in Time, after she separated from her husband, it was difficult to make ends meet and she fell behind on her rent. When she filed her bankruptcy case, the automatic stay prevented her eviction temporarily. In that time, she received her tax refund and was able to catch up in her rent and thus prevent the eviction. Under the bill now before the Senate, Ms. Garcia and her two children would have become homeless, because there would have been no automatic stay of their eviction.

Depending on how the means test is interpreted (and there are numerous ambiguities that will lead to widespread litigation that most consumer debtors cannot afford), Ms. Garcia might not even be allowed to file a chapter 7 case under the bill. For food, clothing, housekeeping supplies, personal care items and services, and miscellaneous she would be allowed to spend $863 per month and she actually spends $1,191. The deemed surplus of $328 multiplied by 60 is more than $6,000 and more than 25 percent of her debt and therefore her case could be deemed an abuse of chapter 7.

The IRS budget used by the means test only allows $4.93 a day for food per person. No one could properly feed a child for $4.93, a day let alone an adult, especially in New York City where Ms. Garcia lives. The food budget for three people like Lucy's family with gross income of $2,600 a month is $444 per month according to the IRS website. The amount allowed for food for lower income families is even less, as low as $3.02 a day per person. under the bill, the trustees in all cases will be required to use the means test even if the debtor's income is under the national median as in this case. (Apparently, the credit industry is trying to confuse Senators by confusing two different sections of the bill. Credit card lobbyists mislead by telling Senators the means test does not apply if the income is below the median income in a case like Ms. Garcia's. This is false. The language of the bill says creditors cannot challenge cases if the income is below the median, but under the section about trustee duties the trustee must apply the means test whether the creditor challenges the case or not.)

Ms. Garcia barely had the money to pay her attorney when she filed her bankruptcy case. She still barely has enough to meet expenses. She certainly would not have had the funds to defend against a motion filed under the means test. She would not have been able to afford the additional filing fees in the bill, combined with the additional attorney's fees that the bill will cause due to the substantial additional paperwork requirements.

Because she did not have all of the bills she had received in the last 90 days before bankruptcy, her attorney would have had to spend significant time trying to determine the addresses at which creditors might "wish to receive correspondence" as required by the bill, and might not have been able to give notice to some creditors that would be deemed "effective" under the bill. These creditors would then be free to continue to harass Ms. Garcia even after she filed her bankruptcy petition.

Ms. Garcia would also have been required to give up her television in which Sears claimed a security interest, since there was no room in her budget for payments to redeem (with payment of the retail value required by the bill) or reaffirm the debt. With two children, ages 6 and 9, loss of her television would have been a real hardship.

ALLEN SMITH

Allen Smith is a resident of Delaware, which has no homestead exemption. In other words, he cannot shield his home from his creditors. Ironically, under this bill, wealthy scofflaws can shield multimillion dollar mansions from their creditors with a little planning, but not Mr. Smith. As a result when the tragic medical problems described in the Time article befell his family, he could not file a chapter 7 case without losing his home. Instead he filed a chapter 13 case, which required substantial payments in addition to his regular mortgage payments for him to save his home. Ultimately, after his wife passed away and he himself was hospitalized he was unable to make all these payments and his chapter 13 plan failed. Had Delaware had a reasonable homestead exemption, and had Mr. Smith been able to simply file a chapter 7 case to eliminate his other debts, he might have been able to save his home.

Mr. Smith's financial deterioration was caused by unavoidable medical problems. Before he thought about bankruptcy he went to consumer credit counseling to try to deal with his debts. However, it appears that he went to consumer credit counseling just over 180 days before the case was filed, and he did not receive a briefing, so the new bill would have required him to go again. This would have been very difficult, considering his medical problems. In fact, his attorney, demonstrating dedication to clients that sharply contrasts with the creditor propaganda picture of bankruptcy lawyers just out to make a buck, made several home visits to Mr. Smith and his wife, who was a double amputee.

The new bill would also have required a great deal of additional time and expense for Mr. Smith and his attorney, through new paperwork requirements and a requirement that he attend a credit education course. Such a course would have done nothing to prevent the enormous medical problems suffered by Mr. Smith and his wife. He did not get in financial trouble through failure to manage his money. He is 73 years old and had never before had debt problems. The bill makes no exceptions for people who cannot attend the course due to exigent circumstances, so Mr. Smith might never have been able to get any relief in bankruptcy under the new law.

Under the new bill, Mr. Smith would also have had to give up his television and VCR to Sears, which claimed a security interest in the items. Under the bill, he would not be permitted to retain possession of these items in chapter 7 unless he reaffirms the debt or redeemed the items. Sears may demand reaffirmation of its entire $3,000 debt under the bill, and to redeem Mr. Smith would have to pay their retail value. After his wife died and her income was gone, Mr. Smith did not have the money to pay these amounts to Sears. Since he is largely homebound, loss of these items would have been devastating.

Sadly, Mr. Smith's medical problems continue. Under current law, if he again amasses medical and other debts he can't pay, he could seek refuge in chapter 13, where he would be required to pay all that he can afford. Under the new bill, Mr, Smith cannot file a chapter 13 case for 5 years (until he is 78 years old). The time for filing a new chapter 7 has also been increased, from 6 years to 8 years.

MAXEAN BOWEN

Maxean Bowen's case shows how every single bankruptcy debtor would be impacted by the bill. She didn't have the money to pay her bankruptcy attorney and had to get it from relatives. With the increased costs for paperwork, obtaining tax records and taking a credit education course, it is not clear that Ms. Bowen would even have been able to afford bankruptcy relief. Her debt problems stemmed from a disability that caused her to be unable to work at her job, reducing her income to $800 per month for herself and her 11-year-old daughter. Thus, her situation was not a result of mismanaging her credit, and a credit education course would not have prevented it. Nonetheless, unless she could find the money to pay for such a course, she could get no bankruptcy relief under the bill.

CHAPTER 13 MADE UNWORKABLE

Mr. President, I want to talk for a moment about cross purposes in this bankruptcy measure because it highlights a fundamental reality about this legislation: it has become larded up with special interest provisions which not only hurt middle class consumers but also completely undermine the ostensible purpose of the legislation: to track more debtors into chapter 13 where they repay their creditors.

Now, again, to repeat what I've stated earlier, I think this is a questionable premise to begin with. After all, under current law—where debtors are allowed to choose which chapter of the code to file under—67 percent of the debtors in chapter 13 fail to complete their repayment plan often because they did not get enough relief from loans, and because economic difficulties continued. So this legislation would take individuals, the majority of whom desperately need a true ''fresh star'', and force them into a bankruptcy process which ⅔ of debtors already fail to complete successfully. And this is what my colleagues call reform.

But I say to my colleagues, this legislation will make chapter 13 unworkable for many more debtors and will likely reduce the number of chapter 13 cases. In fact, the U.S. Trustees have estimated that one piece of this bill alone—the restriction on ''cramdown'' will reduce the number of chapter 13 cases by 20 percent.

How would this happen? Well, ''cramdown'' refers to how certain secured debt—like an auto loan—is valued during bankruptcy. Remember, secured debt is made up of loans that are attached to some physical property the lender can repossess, such as a car. Under current law, if a debtors owes more on a car than it is worth, the amount she must repay to keep her car is equal to the current value of the car not the amount of the loan left unpaid. This is fair to the lender because it ensures that the lender gets repaid the same amount that it would get if it repossessed and sold the vehicle. The rest of the loan doesn't just go away, but it gets classified as unsecured debt—like credit card debt—which is less likely to be repaid.

But under this conference agreement, the debtor must pay back the full value of the loan to keep her car. This will force debtors to pay more debt in chapter 13 cases, will cause more chapter 13 debtors to lose their cars—and jeopardize their ability to get to their job. Does it make sense to make chapter 13 harder to complete if ⅔ of the cases fail already? In addition, the ability to cramdown debt is one of the major attractions of filing under chapter 13, so the effect of this provision of the bill will be to discourage debtors from filing chapter 13—the exact opposite of the supposed purpose of the bill.

But wait, the authors didn't stop there at making chapter 13 harder. This bill will require many more debtors to file 5-year chapter 13 plans instead of 3-year plans. This extends the time in which debtors must have steady income and increases the amount of debt they must pay—significant and unworkable requirements for chapter 13 relief. This conference report will also force chapter 13 debtors to abide by strict IRS standards of ''disposable income'' which can disallow abnormally high housing or transportation costs.

Mr. President, all of these provisions will make chapter 13 less attractive and harder to complete. As I said, the U.S. Trustees believe that the cramdown provisions alone will lower the number of chapter 13 cases by 20 percent. But the added impact of these other hurdles could well make chapter 13 cases impossible to complete for many debtors. Remember, 67 percent already fail to complete such plans.

All of this raises a fundamental question for the supporters of this legislation: If you want more debtors to pay more of their debt back, why are you making it harder for them to do so? The reality, Mr. President is that between the means test barring relief under chapter 7 and the new restrictions and burdens making chapter 13 less workable, the legislation may well force thousands of debtors from gaining any relief under either chapter of the code. Such debtors will find themselves in bankruptcy purgatory—they will have to either lower their income (or borrow more money) so that they can qualify for chapter 7 or be denied a fresh start altogether and be left at the mercy of their creditors. Many such people might very well have filed chapter 13 cases under current law.

But don't just take my word for it colleagues. In a July 12 ''Dear Colleague'' letter the author of the Senate bill admits that. The attachment to the letter states: ''the proposed bills will result in fewer chapter 13s.'' What does all of this add up to, Mr. President? Exactly this: on one hand, you have the bill's supporters claiming that this will cause more debtors to file under chapter 13 and result in greater repayment of creditors, and on the other you have a letter from the author of the legislation saying precisely the opposite.

I say to my colleagues, this cuts to the heart of this entire debate. I hope the banks and credit unions that have been tricked into supporting this legislation ask some hard questions of their lobbyists here in Washington: why are you asking me to support this bill when it will result in fewer chapter 13 repayment plans that allow me to collect what I'm rightfully owed? Indeed the chief economist of the Credit Union National Association, Bill Hampel, now believes that the proposed changes to the Bankruptcy Code will not result in increased loan recoveries for credit unions.

Where are the savings to consumers in this bill, Mr. President? Supporters are running around claiming billions in dollars will be saved under this bill. Well, if fewer people are filing for chapter 13, and those that do file will be more likely to drop out, where are the savings? I hope the sponsors come to the floor to answer this question.

I think there could be two answers Mr. President. The first answer is that there will be no increased repayments under this bill. That there will be no lowering of the cost of credit for consumers.

But the second answer is even more troubling, because I think the truth is, Mr. President, that the only way this bill could result in increased payments to creditors is that it will deny many debtors from filing for bankruptcy altogether. Fresh starts will be too costly and prohibitively difficult for many under this bill so lives will be ruined, wages will be garnished, homes will be lost, and cars will be repossessed. I mean we all know there aren't many assets out there to be seized, but I guess the theory is that if you squeeze enough stones you will eventually get some blood. But the cost will be increased misery, the cost will be more economic devastation for those who are already devastated.

BANKRUPTCY IS A SAFETY NET FOR THE MIDDLE CLASS

The proponents of this bill argue that people file because they want to get out of their obligations, because they're untrustworthy, because they're dishonest, because there is no stigma in filing for bankruptcy.

But any look at the data tells you otherwise. We know that in the vast majority of cases it is a drastic step taken by families in desperate financial circumstances and overburdened by debt. The main income earner may have lost his or her job. There may be sudden illness or a terrible accident requiring medical care.

Specifically we know that nearly half of all debtors report that high medical costs forced them into bankruptcy—this is an especially serious problem for the elderly. But when you think about it, a medical crisis can be a double financial whammy for any family. First there are the high costs associated with treatment of serious health problem. Costs that may not be fully covered by insurance, and certainly the over 30 million Americans without health insurance are especially vulnerable. But a serious accident or illness may disable—at least for a time—the primary wage earner in the household. Even if it isn't the person who draws the income, a parent may have to take significant time to care for a sick or disabled child. Or a son or daughter may need to care for an elderly parent. This means a loss in income. It means more debt and the inability to pay that debt.

Are people overwhelmed with medical debt or sidelines by an illness, deadbeats? This bill assumes they are. For example, it would force them into credit counseling before they could file—as if a serious illness or disability is something that can be counseled away.

Women single filers are now the largest group in bankruptcy, and are one third of all filers. They are also the fastest growing. Since 1981, the number of women filing alone increased by more than 700 percent. A woman single parent has a 500 percent greater likelihood of filing for bankruptcy than the population generally. Single women with children often earn far less than single men aside for the difficulties and costs of raising children alone. Divorce is also a major factor in bankruptcy. Income drops, women, again, are especially hard hit. They may not have worked prior to the divorce, and now have custody of the children.

Are single women with children deadbeats? This bill assumes they are. The new nondischargeability of credit card debt will hit hard those women who use the cards to tide them over after a divorce until their income stabilizes. And the safe harbor in the conference report which proponents argue will shield low and moderate income debtors from the means test will not benefit many single mothers who need help the most because it is based on the combined income of the debtor and the debtor's spouse, even if they are separated, the spouse is not filing for bankruptcy, and the spouse is providing no support for the debtor and her children. In other words, a single mother who is being deprived of needed support from a well-off spouse is further harmed by this bill, which will deem the full income of that spouse available to pay debts for determination of whether the safe harbor and means test applies.

Mr. President, you will hear my colleagues talk about high economic growth and low unemployment and wonder how so many people could be in circumstances that would require them to file for bankruptcy. Well, the rosy statistics mask what has been modest real wage growth at the same time the debt burden on many families has skyrocketed. At it also masks what has been real pain as certain industries and certain communities as the economies restructure. Even temporary job loss may be enough to overwhelm a family that carries significant loans and often the reality is that a new job may be at a lower wage level—making a previously manageable debt burden unworkable.

So what does this bill do to keep people who undergo these wrenching experiences out of bankruptcy? Nothing. Zero. Tough luck. In stead, this conference report just makes the fresh start of bankruptcy harder to achieve. But this doesn't change anyone circumstances, this doesn't change the fact that these folks no longer earn enough to sustain their debt. Mr. President, there is not one thing in this so called bankruptcy reform bill that would promote economic security in working families. It is sham reform.

When you push the rhetoric aside, one thing becomes clear: The bankruptcy system is a critical safety net for working families in this country. It is a difficult demoralizing process, but for nearly all who decided to file, it means the difference between a financial disaster being temporary or permanent. The repercussions of tearing that safety net asunder will be tremendous, but the authors of the bill remain deaf to the chorus of protest and indignation that is beginning to swell as ordinary Americans and Members of Congress begin to understand that bankrupt Americans are much like themselves—are exactly like themselves—and that they are only one layoff, one medical bill, one predatory loan away from joining the ranks.

For the debtor and his family the benefit of bankruptcy—despite the embarrassment, despite the humiliation of acknowledging financial failure—is obvious, to get out from crushing debt, to be able to once again attempt to live within ones means, to concentrate ones income on clear priorities such as food, housing and transportation. But it is also the fundamental principles of a just society to ensure that financial mistakes or unexpected circumstances do not mean banishment forever from productive society.

Mr. President, the fresh start that is under attack here in the Senate today is nothing less than a critical safety net that protects America's working families. As Sullivan Warren and Westbrook put it in ''The Fragile Middle Class'':

> Bankruptcy is a handhold for middle class debtors on the way down. These families have suffered economic dislocation, but the ones that file for bankruptcy have not given up. They have not uprooted their families and drifted from town to town in search of work. They have not gone to the underground economy, working for cash and staying off the books. Instead, these are middle

class people fighting to stay where they are, trying to find a way to cope with their declining economic fortunes. Most have come to realize that their incomes will never be the same as they once were. As their comments show, they realize they can live on $30,000 or $20,000 or even $10,000. But they cannot do that and meet the obligations that they ran up while they were making much more. When put to a choice between paying credit card debt and mortgage debt, between dealing with a dunning notice from Sears and putting groceries on the table, they will go to the bankruptcy courts, declare themselves failures, and save their future income for their mortgage and their groceries.

I say to my colleagues, there may be many different standards that different members have for bringing legislation to the floor of the United States Senate. We come from different backgrounds, we come from different states, we have different philosophies about the role of government in society. We have differing priorities. But for God's sake, there should be one principle that all of us can get behind and that is that we should do no harm here in our work to America's working families.

That's what at stake here. This is a debate about priorities. This is a debate about what side you're on. This is a debate about who you stand with. Will you stand with the big banks and the credit card companies or will you stand with working families, with seniors, with single women with children, with African-Americans and Hispanics.

But I would say to my colleagues on the floor of the U.S. Senate today that this is not a debate about winners and losers. Because we all lose if we erode the middle class in this country. We all lose if we take away some of the critical underpinnings that shore up our working families. Sure, in the short run big banks and credit card companies may pad their profits, but in the long run our families will be less secure, our entrepreneurs will become more risk adverse and less entrepreneurial.

How so? Well this is how a Georgia Congressman described the issue in 1841:

> Many of those who become a victim to the reverses are among the most high-spirited and liberal-minded men of the country—men who build up your cities, sustain your benevolent institutions, open up new avenues to trade, and pour into channels before unfilled the tide of capital.

Mr. President, this is still true today.

This isn't a debate about reducing the high number of bankruptcies. No way will this legislation do that. Indeed, by rewarding the reckless lending that got us here in the first place we will see more consumers over burdened with debt.

No, this is a debate about punishing failure. Whether self inflicted or uncontrolled and unexpected. This is a debate about punishing failure. And if there is one thing that this country has learned, punishing failure doesn't work. You need to correct mistakes, prevent abuse. But you also lead to lift people up when they've stumbled, not beat them down.

Of course, what the Congress is poised to do here with this bill is even worse within the context of this Congress. This is a Congress that has failed to address skyrocketing drug costs for seniors, this is a Congress that has failed to enact a Patients' Bill of Rights much less give all Americans access to affordable health care. This is a Congress that does not invest in education, that does not invest in affordable child care. This is a Congress that has yet to raise the minimum wage.

But instead, we declare war on America's working families with this bill.

What is clear is that this bill will be the death of a thousand cuts for all debtors regardless of whether the means test applies. There are numerous provisions in the bankruptcy reform bill designed to raise the cost of bankruptcy, to delay its protection, to reduce the opportunity for a fresh start. But rather than falling the heaviest on the supposed rash of wealthy abusers of the code, they will fall hardest on low- and middle-income families who desperately need the safety net of bankruptcy.

LENDERS SHOULD BE HELD RESPONSIBLE

You know, a lot of folks must be watching the progress of this bankruptcy bill over the course of this year with awe and envy. Can my colleagues name one other bill that the leadership has worked so hard and with such determination to move by any and all means necessary? Certainly not an increase in the minimum wage. Certainly not a meaningful prescription drug benefit for seniors, certainly not the reauthorization of the Elementary and Secondary Education Act. On many issues, on most issues, this has been a do nothing Congress. But on so-called bankruptcy reform, the Senate and House leadership can't seem to do enough.

One can only wonder what we could have accomplished for working families if the leadership had the same determination on other issues.

Unfortunately those other issues did have the financial services industry behind it. And you have to give them credit—no pun intended—over the past couple of years they have played the Congress like a violin. And what do you know, here we are trying to ram through this bankruptcy bill in the 11th hour as the 106th Congress draws to a close.

In reading the consumer credit industry's propaganda you'd think the story of bankruptcy in America is one of large numbers of irresponsible, high income borrowers and their conniving attorney using the law to take advantage of naive and overly trusting lenders.

As it turns out, that picture of debtors is almost completely inaccurate. The number of bankruptcies has fallen steadily over the past months, charge offs (defaults on credit cards) are down and delinquencies have fallen to the lowest levels since 1995, and now all sides agree that nearly all debtors resort to bankruptcy not to game the system but rather as a desperate measure of economic survival.

It also turns out that the innocence of lenders in the admittedly still high numbers of bankruptcies has also been—to be charitable—overstated.

As high cost debt, credit cards, retail charge cards, and financing plans for consumer goods have skyrocketed in recent years, so have the number of bankruptcy filings. As the consumer credit industry has begun to aggressively court the poor and the vulnerable, bankruptcies have risen. Credit card companies brazenly dangle literally billions of card offers to high debt families every year. They encourage card holders to make low payments toward their card balances, guaranteeing that a few hundred dollars in clothing or food will take years to pay off. The lengths that companies go to keep their customers in debt is ridiculous.

So Mr. President, in the interest of full disclosure—something that the industry itself isn't very good at—I'd like my colleagues to be aware of what the consumer credit industry is practicing even as it preaches the sermon of responsible borrowing. After all, debt involves a borrower and a lender; poor choices or irresponsible behavior by either party can make the transaction go sour.

So how responsible has the industry been? Well I suppose that it depends on how you look at it. On the one hand, consumer lending is terrifically profitable, with high-cost credit card lending the most profitable of all (except perhaps for even higher costs credit like payday loans). So I guess by the standard of responsibility to the bottom line they've done a good job.

On the other hand if you define responsibility as promoting fiscal health among families, educating on judicious use of credit, ensuring that borrowers do not go beyond their means, then it's hard to imagine how the financial services industry could be bigger dead beats.

According to the Office of the Comptroller of Currency, the amount of revolving credit outstanding—that is, the amount of open-ended credit (like credit cards) being extended—increased seven times during 1980 and 1995. And between 1993 and 1997, during the sharpest increases in the bankruptcy filings, the amount of credit card debt doubled. Doesn't sound like lenders were too concerned about the high number of bankruptcies—at least it didn't stop them from pushing high-cost credit like Halloween candy.

Indeed, what do credit card companies do in response to ''danger signals'' from a customer that they may be in over their head? According to ''The Fragile Middle Class,'' an in depth study of who files for bankruptcy and why, the company's reaction isn't what you'd think.

Many credit card issuers respond to a customer who is exceeding his or her credit limit by charging a fee—and raising their credit limit. The practice of charging default rates of interest, which often run into the 20 to 30 percent range, makes customers who give the clearest signs of trouble—missing payments—among the most profitable for the issuers.

That may sound stupid to you and me colleagues, but it gets more bizarre: Banks actively solicit debtors for new credit after they file for bankruptcy—this way, the company knows this customer will take on debt, but will not be legally able to seek another bankruptcy discharge for another 6 years.

As ''The Fragile Middle Class'' goes on to state:

[Many] attribute the sharp rise in consumer debt—and the corresponding rise in consumer bankruptcy—to lowered credit standards, with credit card issuers aggressively pursuing families already carrying extraordinary debt burdens on incomes too low to make more than minimum repayments. The extraordinary profitability of consumer debt repaid over time has attracted lenders to the increasingly high-risk-high-profit business of consumer lending in a saturated market, making the link between the rise in credit card debt and the rise in consumer bankruptcy unmistakable.

So in other words colleagues, those folks who may have come into your office this year or last year talking about how they needed protection from customers who walked away from debts, who thought Congress should mandate credit counseling—to promote responsible money management—as a requirement for seeking bankruptcy protection, who argued that reform of the bankruptcy code is needed because of decline in the stigma of bankruptcy have been pouring gasoline on the flames the whole time. Of course, in the end, if his bill passes, it's working families who get burned.

But guess what? It gets even worse, because the consumer finance industry isn't just reckless in its lending habits, big name lenders all too often break or skirt the law in both marketing and collecting.

For example:

In June of this year the Office of the Comptroller of the Currency reached a settlement with Providian Financial Corporation in which Providian agreed to pay at least $300 million to its customers to compensate them for using deceptive marketing tactics. Among these were baiting customers with ''no annual fees'' but then charging an annual fee unless the customer accepted the $156 credit protection program (coverage which was itself deceptively marketed). The company also misrepresented the savings their customers would get from transferring account balances from another card.

In 1999, Sears, Roebuck & Co. paid $498 million in settlement damages and $60 million in fines for illegally coercing reaffirmations—agreements with borrowers to repay debt—from its cardholders. But apparently this is just the cost of doing business: Bankruptcy judges in California, Vermont, and New York have claimed that Sears is still up to its old strong arm tactics, but is now using legal loopholes to avoid disclosure. Now colleagues, Sears is a creditor in one third of all personal bankruptcies. And by the way, this legislation contains provisions that would have protected Sears from paying back any monies that customers were tricked into paying under these plans.

This July, North American Capital Corp., a subsidiary of GE, agreed to pay a $250,000 fine to settle charges brought by the Federal Trade Commission that the company had violated the Fair Debt Collection Practices Act by lying to and harassing customers during collections.

In October, 1998, the Department of Justice brought an antitrust suit against VISA and Mastercard, the two largest credit card associations, charging them with illegal collusion that reduced competition and made credit cards more expensive for borrowers.

Now Mr. President, this is just a few examples, I could go on and on. At a minimum, these illegal and unscrupulous practices rob honest creditors who play by the rules of repayment. And the cost to debtors and other creditors alike are tremendous.

But other practices aren't illegal, merely unsavory.

For example, credit card companies perpetuate high interest indebtedness by requiring low minimum payments and in some cases canceling the cards of customers who pay off their balance every month. Using a typical minimum monthly payment rate on a credit card, it would take 34 years to pay off a $2,500 loan, and total payments would exceed 300 percent of their original principal. A recent move by credit card industries to make the minimum monthly payment only 2 percent of the balance rather than 4 percent—further exacerbates the problems of some uneducated debtors.

Lenders routinely offer low ''teaser'' interest rates which expire in as little as 2 months and engage in ''risk-based'' pricing which allows them to raise credit card interest rates based on credit changes unrelated to the borrower's account. Many credit card contracts now contain binding arbitration clauses—buried in the fine print of contracts which are often not even included with pre-approved card offers—that cut off the borrower's ability to seek redress in the courts in the case of a dispute.

Even more ironic: at the same time that the consumer credit industry is pushing a bankruptcy bill that requires credit counseling for debtors, the Consumer Federation of America found that many prominent creditors have slashed the portion of debt repayments they shared with credit counseling agencies—in some cases by more than half. This may force some agencies to cut programs and serve fewer debtors. At the same time, the industry has stopped the practice of eliminating or significantly reducing the interest rates charged on debts being repaid with the help of a counseling agency making counseling less likely to succeed.

Mr. President, let me repeat myself in case my colleagues somehow missed the blatant hypocrisy of what's going on here: The big banks and credit card companies are pushing to rig the system so that you cannot file for bankruptcy unless you perform credit counseling at the same time that they are jeopardizing the health of the credit counseling industry and making it significantly more costly for debtors.

That's pretty brazen, but as my colleagues will hear over and over in this debate, this isn't just an industry that wants to have it both ways, it wants to have it several different ways.

Of course these are mild abuses compared to predatory lending. Schemes such as payday loans, car title pawns, and home equity loan scams harm tens of thousands of more Americans on top of those shaken down by the mainstream creditors. Such operators often target those on the economic fringe like the working poor and the recently bankrupt. They even claim to be performing a public service: providing loans to the uncreditworthy. It just also happens to be obscenely profitable to overwhelm vulnerable borrowers with debt at usurious rates of interest. Hey, who said good deeds don't get rewarded?

Reading this conference report makes it clear who has the clout in Washington. There is not one provision in this bill that holds the consumer credit industry truly responsible for their lending habits. My colleagues talk about the message they want to send to deadbeat debtors, that bankruptcy will no longer be a free ride to a clean slate. Well what message does this bill send to the banks, and the credit card companies? The message is clear: make risky loans, discourage savings, promote excess, and Congress will bail you out by letting you be more coercive in your collections, by putting barriers in between your customers and bankruptcy relief, and by ensuring that the debtor will emerge from bankruptcy with his vassalage to you intact. This is in stark contrast to the numerous punitive provisions of the bill aimed at borrowers.

So Mr. President, the record is clear: lenders routinely discourage healthy borrowing practices, encourage excessive indebtedness and impose barriers to paying of debt all in the name of padding their profits. It would be a bitter irony if Congress were to reward big banks, credit card companies, retailers, and other lenders for their bad behavior, but that is exactly what passage of bankruptcy reform legislation would do.

I would characterize the debate like this and make it very simple for my colleagues. This is fundamentally a referendum on Congress's priorities and you simply need to ask yourself: whose side am I on? Am I on the side of working families who need a financial fresh start because they are overburdened with debt? Am I for preserving this critical safety net for the middle class? Will I stand with the civil rights community, and religious community, and the women's community, and consumer groups and the labor unions who fight for ordinary Americans and who oppose this bill?

Or will you stand with the credit card companies, and the big banks, and the auto lenders who desperately want this bill to pad their profits? I hope the choice will be clear to colleagues.

MORE BANKRUPTCIES, NOT LESS, IS THE LIKELY RESULT

Mr. President, at the beginning of my statement I said the bankruptcy ''crisis'' is over and it ended without Congress passing legislation. Ironically, it probably ended because Congress didn't act. The bean counters in the consumer credit industry realized that all these bankruptcies weren't good for profits so they started lending less money, and they were more careful about who they lent money to. In fact, the overall consumer debt level actually declined in 1998, and guess what—fewer bankruptcies. And this trend has continued in 1999 and so far in 2000. But if this conference report become law, bankruptcy protection will be harshly rolled back. It will be even more profitable to over burden folks with debt—and the banks and the credit card companies will fall all over themselves trying to do it. but this time America's working families will pay more of the price.

This argument isn't purely theoretical, history and empirical data back it up. I want to ready my colleagues a few passages from an article published in the August 13, 1984 issue of Business week. This article, entitled ''Consumer Lenders Love the New Bankruptcy Laws,'' was written in the recent aftermath of Congress' last tightening of the bankruptcy code in 1984.

Here's how the article begins, quote:

It doesn't take much to get a laugh out of Finn Casperson these days. Just ask him the outlook for Beneficial Corp. now that the U.S. has a tough new bankruptcy law. 'It looks a lot rosier,' says the chairman of the consumer finance company, punctuating the assessment with a hearty chuckle.

The article then explains what the banks and the credit card industries got back in 1984:

But when someone seems to be abusing the revised law, a judge can, on his or her own, throw a case out of chapter 7, leaving the debtor to file under chapter 13. And in chapter 13, where an individual works out a repayment plan under court supervision, lenders now can get a court order assigning all of a borrower's income for three years to repaying debts—after allowance for food and other basic needs. Merely empowering a judge to determine that a debtor is abusing the bankruptcy courts was the change most responsive to the lenders' contention that bankruptcy was being used by people capable of meeting their obligations.

Does this sound familiar to colleagues? It should. These ''reforms,'' are substantially similar to what industry says are desperately needed now—the means to curb abusive filings. That was exactly what Congress gave them in 1984. But the critical question is, how did lenders behave after the 1984 ''strengthening'' of the bankruptcy code? That story will help us answer the question: if we give them this new stricter, lopsided law in 2000, what will they do with it?

That 1984 Business Week article suggested what was to come:

Lenders say they will make more unsecured loans from now on, trying to lure back the generally younger and lower-income borrowers recently turned away.

But, Mr. President, that's exactly the problem. The consumer finance industry went after these folks with a vengeance. Lenders felt so protected by the new bankruptcy law that they eventually through caution to the wind and began using the aggressive, borderline deceptive and abusive, tactics that are now common in the industry.

And guess what, both bankruptcies and consumer debt levels exploded after 1985. And some independent observers point the figure directly at the 1984 reforms and the lending industry's foolhardy reaction. In a 1999 Harvard Business School study entitled ''The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?'' David Moss of the Harvard Business School and Gibbs Johnson, an attorney, lay out the case. They say:

It is conceivable, therefore, that the procreditor reforms of 1984 actually contributed to the growth of consumer (bankruptcy) filings. This could have occurred if the reforms exerted a larger impact in encouraging lenders to lend—and to lend more deeply into the income distribution—than they did in deterring borrowers from borrowing and filing.

Mark Zandi, in the January 1997 edition of ''The Regional Financial Review,'' writes:

While forcing more households into a chapter 13 filing through an income test would raise the amount that lenders would ultimately recover from bankrupt borrowers, it would not significantly lower the net cost of bankruptcies. Tougher bankruptcy laws will simply induce lenders to ease their standards further.

Again, we know this is exactly what happened. Credit card companies sent out over 3.5 billion solicitations last year. They use aggressive tactics to sign up borrowers—and to keep you in debt once they get you. And they also went after low income individuals—even though they might be worse credit risks. Why? Because they are desperate for credit, they are a captive audience and can be charged exorbitant interest rates and fees. Despite the fact that there are hundreds of credit card firms targeting low income borrowers, interest rates and terms on these cards have not been driven down by the supposed competition. For these borrowers, the market is failing. And firms who aren't squeamish about using aggressive collection tactics have proved that the poor, or those with bad credit—even though they might be less credit worthy onpaper—can be kept to default rates as low as those for wealthier borrowers. This is because the poor are more vulnerable to intimidation and they are less likely to have legal defense against law suits.

Mr. President, I ask you, could the Senate play a better joke on the American people? The supposed bankruptcy ''crisis'' of the 1990's—which bill supporters say merits a harsh rollback of bankruptcy protection for debtors—actually has its origins in the last time Congress ''reformed'' the bankruptcy code in favor of industry. I ask you, why would we be so stupid again? It's like our parents used to say: ''Fool me once, shame on you. Fool me twice, shame on me.''

WORSE THAN WHAT THE SENATE PASSED

Now Mr. President, not only does the majority leader want to ram through bankruptcy legislation on the State Department authorization conference report, which he has literally hijacked for that purpose, there is no question that this is a significantly worse legislation than what passed the Senate. In fact, there's no pretending that this is a bill designed to curb real abuse of the bankruptcy code.

Does this bill take on wealthy debtors who file frivolous claims and shield their assets in multimillion dollar mansions? No, it guts the cap on the homestead exemption adopted by the Senate. I ask my colleagues who support this bill: how can you claim that this bill is designed to crack down on wealthy scofflaws without closing the massive homestead loophole that exists in five states? And in a bill that falls so harshly on the backs of low and moderate income individuals?

I wonder how my colleagues who vote for this conference report will explain this back home. How will they explain that they supported letting wealthy debtors shield their assets from creditors at the same time they voted to end the practice under current law of stopping eviction proceedings against tenants who are behind on rent who file for bankruptcy? With one hand we gut tenants rights, with the other we shield wealthy homeowners.

Nor does this bill contain another amendment offered by Senator SCHUMER and adopted by the Senate that would prevent violators of the Fair Access to Clinic Entrances Act—which protects women's health clinics—from using the bankruptcy system to walk away from their punishment. Again, I thought the sponsors of the measure wanted to crack down on people who game the system. What could be a bigger misuse of the system then to use the bankruptcy code to get out of damages imposed because you committed an act of violence against a women's health clinic?

And yet the secret conferees on his bill simply walked away. They walked away from a real opportunity to prohibit an abuse that all sides recognize exists, but they also walked away from an opportunity to protect women from harassment. They walked away from the opportunity to protect women from violence.

So why shouldn't people be cynical about this process? Ever since bankruptcy reform was passed by the Senate this bill has gotten less balanced, less fair, and more punitive—but only for low and moderate income debtors. So again, I would say to my colleagues, this bill is a question of our priorities. Will we stand with wealthy dead beats or will we take a stand to protect women seeking reproductive health services from harassment?

But unfortunately, these were not the only areas where the shadow conferees beat a retreat from balance and fairness. For example:

Safe harbor dollar amounts—The Senate bill provided that the higher of state or national median income should be used for the safe harbor from the means test. The shadow conference uses state median income, which is a far lower number in many states. This is an important issue because debtors in high income/high expense areas of low-income states will be very much disadvantaged.

Safe harbor treatment of women not receiving child support—The shadow conference has inserted the ''Hyde safe harbor'' which protects some low income families from the arbitrary means test based on Internal Revenue Service expense standards. But this safe harbor will not benefit many single mothers who need help the most because it is based on the combined income of the debtor and the debtor's spouse, even if they are separated, the spouse is not filing for bankruptcy, and the husband is providing no support for the debtor and her children. In other words, a single mother who is being deprived of needed support from a well-off spouse is further harmed by this bill, which will deem the full income of that spouse available to pay debts for the safe harbor determination. This unfair treatment appears clearly intended, since the safe harbor from creditor motions elsewhere in the same section is worded differently, and does not take into account the income of a separated nondebtor spouse, except to the extent support is actually being paid by that spouse.

Gutting the Durbin means test ''mini-screen''—The Senate bill contained an amendment meant to give bankruptcy judges more flexibility in applying the means test for moderate income debtors. The provision was changed in a way that turns the intent of this provision on its head. Instead of creating more flexibility in the means test, it would mean much less flexibility.

Elimination of protections for family farmers and family fishermen—The Senate bill enhanced bankruptcy protections for family farmers and added protections for family fishermen. Senate negotiators have reportedly agreed to eliminate entirely the new protections for fishermen, as well as most of the new protections for family farmers.

Unrealistic valuation of property—Senate negotiations have reportedly agreed to a House provision that would change current rules on property valuation. Under this provision, property would have to be valued at retail value, without accounting for any of the costs of sale, despite the fact that resale at such value would be impossible.

Elimination of Byrd and Levin amendments on consumer credit—The amendment to the Senate bill offered by Senator BYRD required that consumer information be included in Internet credit card applications. The Levin amendment prohibited certain finance charges on credit card payments made within the grace periods provided by creditors. Senate negotiations have reportedly agreed to delete both of these important amendments.

Unrealistic notice requiremnts—A provision from the House bill requires that debtors use the address provided in pre-bankruptcy communications to provide any necessary notice to their creditors. Under this provision, it would be impossible in many cases for debtors to know what address to use, since debtors often do not retain their pre-bankruptcy communications.

Elimination of sanctions against creditors who file abusive motions—The Senate bill contained sanctions against creditors who file motions claiming ''abuse'' which are coercive or not substantially justified. These sanctions would have been a key protection against overly aggressive creditors for debtors in bankruptcy. Senate negotiators have reportedly agreed to eliminate these sanctions.

Filing of tax records—S. 625 required debtors to provide tax returns only if requested by a party in interest. The shadow conference requires the filing of tax records in every case.

A TERRIBLE PROCESS

Mr. President, let me just say a few words about the process on this legislation, which is terrible. The House and Senate Republicans have taken a secretly negotiated bankruptcy bill and stuffed it into the State Department authorization bill in which not one provision of the original bill remains. Of course, State Department authorization is the last of many targets. The majority leader has talked abut doing this on an appropriations bill, on a crop insurance bill, on the electronic signatures bill, on the Violence Against Women Act. So desperate are we to serve the big banks and credit card companies that no bill has been safe from this controversial baggage.

We are again making a mockery of scope of conference. We are abdicating our right to amend legislation. We are abdicating our right to debate legislation. And for what? Expediency. Convenience.

However, I'm not sure that we have ever been so brazen in the past. Yes we have combined unrelated, extraneous measures into conference reports. Usually because the majority wishes to pass one bill using the popularity of another. Putting it into a conference report makes it privileged. Putting it into a conference report makes it unamendable. So they piggy back legislation. Fine. But Mr. President, this may be the first time in the Senate's history where the majority has hollowed out a piece of legislation in conference—left nothing behind but the bill number—and inserted a completely unrelated measure.

I would challenge my colleagues walk into any high school civics class room in America and explain this process. Explain this new way that a bill becomes law. What the majority has essentially done is started down the road toward a virtual tricameral legislature—House, Senate, and conference committee. But at least the House and the Senate have the power under the constitution to amend legislation passed by the other house—measures adopted by the all-powerful conference committee are not amendable.

Is bankruptcy reform so important that we should weaken the integrity of the Senate itself? It is not. I would question whether any legislation is that important, but to make such a blatant mockery of the legislative process on a bill that is going to be vetoed anyway? That is effectively dead? Just to make a political point? What have we come to?

This is a game to the majority. The game is how to move legislation through the Senate with as little interference as possible from actual Senators.

Colleagues I want to remind you of what Senator KENNEDY said 4 years ago when the Senate voted to gut rule 28, the Senate rule limiting the scope of conference, that we are violating with this conference report. Speaking very prophetically he said:

The rule that a conference committee cannot include extraneous matter is central to the way that the Senate conducts its business. When we send a bill to conference we do so knowing that the conference committee's work is likely to become law. Conference reports are privileged. Motions to proceed to them cannot be debated, and such reports cannot be amended. So conference committees are already very powerful. But if conference committees are permitted to add completely extraneous matters in conference, that is, if the point of order against such conduct becomes a dead letter, conferees will acquire unprecedented power. They will acquire the power to legislate in a privileged, unreviewable fashion on virtually any subject. They will be able to completely bypass the deliberative process of the Senate. Mr. President, this is a highly dangerous situation. It will make all of us less willing to send bills to conference and leave all of us vulnerable to passage of controversial, extraneous legislation any time a bill goes to conference. I hope the Senate will not go down this road. Today the narrow issue is the status of one corporation under the labor laws. But tomorrow the issue might be civil rights, States' rights, health care, education, or anything else. It might be a matter much more sweeping than the labor law issue that is before us today.

He was absolutely right, Mr. President. We are headed down that slippery slope he described. For the last three years we have handled appropriations in this manner. We've combined bills together, the text is written by a small group of Senators and Congressmen and these bills have been presented to the Senate as an up or down proposition. And now we're doing it with so-called bankruptcy reform.

Conference reports are privileged. It is very difficult for a minority in the Senate to stop a conference report as they can with other legislation. That's why these conference reports are being used in this way. And that's why the rules are supposed to restrict their scope.

Last year, Senator DASCHLE attempted to reinstate rule 28 on the Senate floor. He was voted down, and he spoke specifically about how we have corrupted the legislative process in the Senate:

I wish this had been a one time event. Unfortunately, it happens over and over and over. It is a complete emasculation of the process that the Founding Fathers had set up. It has nothing to do with the legislative process. If you were to write a book on how a bill becomes a law, you would need several volumes. In fact, if the consequences were not so profound, some could say that you would need a comic book because it is hilarious to look at the lengths we have gone to thwart and undermine and, in an extraordinary way, destroy a process that has worked so well for 220 years.

So where does it stop? As long as the majority want to avoid debate, as long as the majority wants to avoid amendments and as long as Senators will go along to get along we will find ourselves forced to cast up or down votes on legislation—a rubber stamp yes or no—with no ability to actually legislate.

And each Senator who today votes for this conference report should know: they may find themselves in the majority today, they may be OK with letting this bill go because they are not offended by what it contains, but be forewarned, the day will come when you will be on the other side of this tactic. Today it is bankruptcy reform, but someday you will be the one protesting the inclusion of a provision that you believe is outrageous.

Regardless of the merits of bankruptcy reform, this is a terrible process. I would urge my colleagues to vote ''no'' to send a message to the leadership. Send a message that you want your rights as Senators back.

Finally, Mr. President, let me end on this note. I think many in this body believe that a society is judged by its treatment of its most vulnerable members. Well, by that standard this is an exceptionally rough bill in what has been a very rough Congress. All the consumer groups oppose this bill, 31 organizations devoted to women and children's issues oppose this legislation.

There is no doubt in my mind that this is a bad bill. It punishes the vulnerable and rewards the big banks and credit card companies for their own poor practices. And this legislation has only gotten worse in sham conference.

Earlier, Mr. President, I used the word ''injustice'' to describe this bill—and that is exactly right. It will be bitter irony if creditors are able to use a crisis—largely of their own making—to convince Congress to decrease borrower's access to bankruptcy relief. I hope my colleagues reject this scheme and reject this bill.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

EMBASSY SECURITY AND BANKRUPTCY CONFERENCE REPORT

Mr. FEINGOLD. Mr. President, let me begin by agreeing with the Senator from Minnesota. The measure before us is a work of injustice. It works injustice on the Senate's procedures. And if it passes, it will work injustice on millions of Americans struggling to cobble together a fresh start after financial hardship. And the measure is also a clear example of the power of money in the legislative process. That's an injustice too, because it puts the needs of the special interests ahead of the needs of the American people.

Let us begin with the procedural injustice. If Senators allow business to be done as is being attempted with this conference report, then we might as well all just go home. Because conference committees will be doing our jobs.

Unlike a normal conference report, this conference report includes absolutely no legislation on the matters that the Senate sent to the conference committee—which, for the information of my colleagues and the people watching, was a bill on embassy security and authorizations for the Department of State, a terribly serious matter. That was not what came back—nothing like that. Instead this conference report brings back to the Senate a complete bill entirely irrelevant to the bill sent to conference. What it brings back is a bankruptcy bill.

That is not the job of a conference committee. It is not the job of a conference committee to search out the legislative vineyards for whatever issues appear ripe for decision. It is not the job of a conference committee to write legislation on matters not committed to it. The conference committee is doing our jobs.

The Constitution confers on the Senate and the House of Representatives certain enumerated powers. Article I, Section 1, of the Constitution provides: ''All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.''

If the Senate so chooses, it may delegate some of its powers to a committee of its Members. But if those Members so delegated recognize no limits on their authority, then they have usurped nothing less than all the powers that the Constitution vests in the Senate itself. The conference committee is doing our jobs.

Who needs a full Senate and a full House of Representatives in Congress assembled? The conference committee is doing our jobs.

Who needs amendments between the Houses on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate to disagree to any House amendments or insist on any Senate amendments on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate to request a conference or agree to a conference on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate to consider any motions to instruct the conferees on the bankruptcy bill? The conference committee is doing our jobs.

Who needs the Senate even to name conferees on the bankruptcy bill? The embassy security conference committee is doing our jobs.

Who needs for Congress to address the increase in the minimum wage that the Senate attached to the last bankruptcy bill? The conference committee is doing our jobs.

Who needs for Congress even to take up, consider, debate, and amend this particular bankruptcy bill, which was introduced on October 11? The conference committee is doing our jobs.

Who needs for the Senate to take any action whatsoever to grant this conference committee power to act on bankruptcy? The conference committee is doing our jobs.