

Span has carried our debates to viewers throughout the Nation.

We conduct ourselves in the open like this because the Senate best serves the Nation when it conducts its business on this Senate floor, open to the public view. It is here, on this Senate floor, that each of this Nation's several states is represented. And it is here, in their debate and votes on amendments and measures, that Senators become accountable to the people for what they do.

The Senate is distinctive for the amount of work that it used to do on the Senate floor. In contrast to the House of Representatives, where more work is done in committee, the Senate used to do more work on the floor.

The majority today diminishes the Senate floor in favor of the backroom conference committee, chosen to address these issues by none but themselves, accountable to none but themselves, and open to observation by none but themselves.

The proceedings of the Senate floor are open to view because, as Justice Louis Brandeis wrote, "Sunlight is said to be the best of disinfectants."

William Jennings Bryan put it this way: "The government being the people's business, it necessarily follows that its operations should be at all times open to the public view. Publicity is therefore as essential to honest administration as freedom of speech is to representative government."

It is a legal maxim that "Truth fears nothing but concealment." And it follows as night follows day that concealment is the enemy of truth.

As Justice Brandeis also wrote, "Secrecy necessarily breeds suspicion." How will the public gain confidence in the work of the Senate if the public cannot see its operations?

Morley Safer once said that "All censorship is designed to protect the policy from the public." If the majority had confidence in its policy, would it not do its business in the light of day?

As Senator Margaret Chase Smith said on this Senate floor on September 21, 1961, "I fear that the American people are ahead of their leaders in realism and courage—but behind them in knowledge of the facts because the facts have not been given to them."

In another context, Senator Robert Taft said on this Senate floor on January 5, 1951:

The result of the general practice of secrecy has been to deprive the Senate and the Congress of the substance of the powers conferred on them by the Constitution.

And as Senator KENNEDY, our distinguished colleague, warned in 1996:

This . . . is a vote about whether this body is going to be governed by a neutral set of rules that protect the rights of all Members, and by extension, the rights of all Americans. If the rules of the Senate can be twisted and broken and overridden to achieve a momentary legislative goal, we will have diminished the institution itself.

And that, in the end, is what has happened here. Four Senators who had the good fortune to be named to confer on an embassy security bill have taken it upon themselves to conduct the business and exercise the powers that the Constitution vested in the Senate and the Congress.

In 1973, the nuclear physicist Edward Teller said, "Secrecy, once accepted, becomes an addiction." Mr. President, my fear is that this majority will simply continue down this path of snuffing out minority rights, creating one legislative Frankenstein after another.

Senator KENNEDY warned in 1996: "It will make all of us less willing to send bills to conference . . ." My fear is that we can no longer trust any conference committee.

On this Halloween, I fear for what legislative creatures will walk abroad as long as this majority holds power. I, for one, will stand guard against them and fight them. In defense of the Senate, I urge my colleagues to join me, Senator WELLSTONE, and others, and oppose this conference report.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I hope every Democrat or staff member heard the words of Senator FEINGOLD. His words will be memorable in terms of the record of the Senate. They are prophetic for now and in the future. I thank the Senator for the power of his presentation, for the power of his words.

I ask the Senator from Illinois how much time he thinks he will need.

Mr. DURBIN. Twenty minutes.

Mr. WELLSTONE. Mr. President, I yield 20 minutes to the Senator from Illinois, Mr. DURBIN.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, before beginning, I say to the Senator from Minnesota, two of our colleagues, Senator DORGAN and Senator HARKIN, have asked for 10 minutes each, I think Senator HARKIN first. I do not know if the Senator wants to make that part of his unanimous consent request at this time.

Mr. WELLSTONE. I did tell Senator HARKIN I would grant him some time. I want to allow some time for myself to speak in opposition to this as well. Let me see how things go.

Mr. DURBIN. I thank the Senator from Minnesota.

BANKRUPTCY

Mr. DURBIN. Mr. President, you can expect the Halloween thing to be part of most of our speeches on the floor today regardless of the issue at stake. It is Halloween, and children of all ages will be dressing up in their favorite costume and ringing doorbells yelling: Trick or treat.

Our Halloween tradition that we enjoyed as kids, and even as adults, dates back to Celtic practices, when on this day witches and other evil spirits were believed to roam the Earth, playing tricks to mark the season of diminishing sunlight.

The 106th Congress is waning. Our legislative days will soon be coming to an end, and we will be ending the legislative term with a cruel legislative trick: a bankruptcy conference report masquerading as a State Department authorization bill. You know Congress is close to adjournment when slick procedural maneuvers are used to bring a one-sided work product to the Senate floor.

The majority found a shell conference report, they basically held a meeting without an official conference committee, struck the contents of the original bill, and plugged in the bankruptcy bill that we have before us today. Rather than negotiate with Democrats directly or work to produce a bipartisan bill that the President might support, they went back to their old tactic: Take it or leave it; this is the Republican version; this is the version supported by business. Take it or leave it.

When I hear all the claims in the Presidential campaign about bipartisanship, I shake my head when I look at the Republican leadership in the Senate and the House which continuously stops the Democrats from participating. If we are going to have bipartisanship, shouldn't we have it on a bill as important as bankruptcy reform?

Let me say from the outset, I support bankruptcy reform. Two years ago, I was on the Judiciary Committee and the subcommittee with jurisdiction over this issue. Senator GRASSLEY and I spent countless hours with our staffs trying to come up with meaningful and fair bankruptcy reform.

We had a good bill. Ninety-seven Members of the Senate voted for it. I thought that was a pretty good endorsement of a bipartisan effort, but it has gone downhill consistently ever since.

That bill was then trapped in a conference committee that was totally Republican, no Democrats allowed. They brought back a work product that was the byproduct, I guess, of the best wishes of the credit industry. It had no balance to it whatsoever. Frankly, it was defeated. Then we turned around—I guess it wasn't called; it would have been defeated by Presidential veto.

Then over the next 2 years, others worked on this issue, and I hoped we would return to a bipartisan approach. It did not happen. So for all of the calls for bipartisanship by the Republican side of the aisle, when it comes to conference committees, no Democrats are allowed. Republicans said: Take it or leave it. In this case, we should definitely leave it.

The bankruptcy code is a complex piece of law. When I was debating this in earlier years, I marveled at the fact that I was considered to be one of the spokesmen on the issue of bankruptcy.

What is my experience in bankruptcy? Thirty years ago I took a bankruptcy course in law school, and 20 years ago I was a trustee in a bankruptcy in Springfield, IL. That is the sum and substance of my experience in bankruptcy, and I turned out to be one of the more experienced people at the table on the issue, one I had to relearn the complexities of in a short period of time.

A constant theme has guided me through this debate, and that is: Yes, there are people who go to bankruptcy court and file, abusing the system, gaming the system, trying to avoid their responsibility to pay their just debts. I believe that is the case, and if this law is directed at those people, I am for it.

Secondly, I believe there are abuses on the other side as well. I do not need to tell the others who are gathered and those following this debate how many credit card solicitations you receive at home. Quite a few, I bet. I will go through some statistics in a few minutes about the volume of credit card solicitations.

I have a godson in Springfield, IL, Neil Houlihan. He is now 7 or 8 years old. He got his first credit card solicitation at the age of 6. This is a bright young man, but I do not believe that at the age of 6, when you are learning to ride a bicycle, you should have a credit card in your back pocket. Obviously, MasterCard did and sent Neil his solicitation.

They have sent solicitations to children, people in prison, and family pets. Everyone gets one. Every time you go home at night, you sort through all the offers to give you a new credit card. In a way, it is flattering; you feel empowered: You get to make that decision. In another way, the credit card industry would have us carry as many pieces of plastic in our pocket as possible, with little or no concern as to whether we can handle the debt.

What I believe—and I hope others agree with me—is we should not ration credit in America nor should we ration information about credit in America. We ought to know, as individuals, what the terms of these credit card agreements are, what the traps are that you can hardly read with a magnifying glass on the back of your statement. We have a right to know what we are getting into. If it is a caveat-emptor situation, it is not fair. Consumers have a right to know.

The democratization of credit in America has made this a better place to live. I understand the fact that not too many years ago, if a woman was a waitress in a restaurant, the likelihood that she could get a credit card was

next to zero. Today she could qualify for one. That is a good development.

We have to look at the abuse of solicitation of credit cards and what it leads to. The credit card industry wants us to close down the loopholes in the bankruptcy code, but they do not want us to look at the loopholes in their own system. When I explain the details, my colleagues will understand.

They say this is a reflection on the moral decadence of America; that so many people are filing for bankruptcy. I assume those who abuse the system may be morally decadent. Let someone else be the judge of it. At least it raises that issue.

I asked the credit card industry: Do you have a moral responsibility? Are you meeting your moral responsibility? When you flood people who are not creditworthy with solicitations for more credit cards, are you meeting your responsibility? When you put ATMs at casinos, are you meeting your responsibility? When you go to football games and basketball games at the college level on up and say, We can give you a beautiful sweatshirt that shows the University of Illinois symbol if you, as a student, will sign up for a credit card, are you meeting your moral responsibility?

When the dean at Indiana University says the No. 1 reason kids drop out of school is credit card debt—they have so much debt accumulated, they have to go to work and try to pay some of it off—are you meeting your moral responsibility?

This field of morality can be a little tricky, but this credit card industry does not believe they have a special responsibility in this debate. I think they are wrong.

In 1999, there were 3.5 billion credit card solicitations mailed to American households. Let me tell you why that is interesting. There are 78 million creditworthy households in America and 3.5 billion credit card solicitations. Do you ever wonder why your mailbox is full of these solicitations? They are, frankly, coming at you in every direction, and it is not just through the mails; it is in magazines; it is on television; it is everywhere you turn. They try to lure you into signing up for another credit card with very few questions asked.

These 3.5 billion credit card solicitations, frankly, do not tell you all you need to know about the obligations you are incurring.

I continue to believe, as I did when this debate got started, when we passed a strong disclosure provision, that consumers were entitled to know some very basic things.

This is one of the things I suggested but which the credit card industry rejected. It is just this simple. I think they ought to say, in every credit card statement: If you make the minimum monthly payment required, it will take

you X number of months to pay off the balance. When you have paid it off, this is how much you will have paid in interest and how much you will have paid in principal.

That is not a tough thing to calculate; it is not a radical suggestion; it is disclosure, so that someone who looks at a credit card debt—let's say they want to pay the 2 percent monthly minimum on \$1,295.28—is told, as part of routine disclosure, it will take them 93 months—that is more than 7 years—to pay off the balance. And when it is all over, their payments will have come to \$2,418, almost twice the original balance.

The credit card industry said that is an outrageous disclosure that they would disclose this to people to whom they send monthly statements. At first they said it was not technologically possible. That is laughable, in this world of computers, that they could not tell you that basic information. They do not want to tell you that because they understand, as long as people are paying that minimum monthly payment, they are going to be trapped forever in paying more and more interest.

There are times when people cannot pay more than the minimum monthly balance. That is a decision—a conscious decision—consumers should make. But I think the credit card industry owes it to people across America to tell them the terms of what they are getting into. Frankly, they have resisted that all along.

It is my understanding that a lot of the language we have put in here about credit card disclosure, and even saw in the Senate bill, has basically been eliminated. It is my understanding that it has been weakened in many respects.

The Republican leadership brings this bill to the floor and permits banks with less than \$250 million in assets—and that, incidentally, is over 80 percent of the banks in America—to have the Federal Reserve provide its customers with a toll free number to review their credit card balances for the next 2 years. So instead of telling you on a monthly statement, with all the information they pile in—all the circulars, all the advertising—they are going to give you an 800 number and say: You can call here, and maybe they will answer your question as to how much you are ultimately going to have to pay. You know that isn't going to happen. The credit card industry knows it is not going to happen. That is as far as they want to go.

Let me tell you about another thing that is amazing. It is called the homestead exemption. Did you know, in most States now, if you file for bankruptcy, you are allowed to claim as an exemption—in other words, protected from the bankruptcy court and your creditors—your homestead, your home?

But every State has a different standard about how much you are allowed to exempt.

My colleague, Senator KOHL of Wisconsin, basically said we ought to get right of this because fat cats go out and buy magnificent homes and mansions and ranches and farms and call them their homes, plow everything they have into them, and then say to their creditors they have nothing to put on the table.

We had instances where the Commissioner of Baseball many years ago—one of the former Commissioners of Baseball—managed to protect a mansion in Florida because he bought it in time before he filed for bankruptcy. We had a lot of well-known actors and actresses who turned around and did the same thing in southern California.

The average person does not have that benefit. Many States do not allow much more than a modest exemption for the homestead. We said, under Senator KOHL's amendment, that we would create a \$100,000 nationwide cap on homestead exemptions. I think it makes sense. But, frankly, it did not survive. Now, under this bill that is before us, if you have owned property for more than 2 years, then there is virtually no limitation. It is up to the States to decide again. I think that is a mistake. This is a departure.

The other area is clinic violence. This gets to a point that is worth speaking to. Senator SCHUMER of New York brought this point forward. If someone is engaged in violence at an abortion clinic—and it has happened; we have seen it happen—and they are found to be responsible in a court of law for their wrongdoing, and they are held responsible for damages to be paid, in many cases all they need to do is file for bankruptcy, and they are virtually discharged of all responsibility on that debt.

I think that is wrong. By a vote of 80-17 the Senate agreed with me. But Senator SCHUMER's amendment did not survive this conference, and it is not going to be considered. As a result, we find a situation where those who are guilty of clinic violence, people such as Randal Terry and Flip Benham, have usurped our clinic protection laws by feigning bankruptcy.

Did you know, even student loans are not dischargeable under bankruptcy under chapter 13? Yet these folks have been engaged in violent activity, found guilty by a jury of their peers, and use this bankruptcy code as a shield.

I tried to add some provisions in the Senate bill that gave the bankruptcy judges more flexibility in applying a means test for moderate-income debtors. It was stricken from the bill.

Who actually files for bankruptcy? It is interesting to see. You might think that it is the high rollers, but it turns out to be some of the poorest people in America. The average income of people

filing for bankruptcy over the last 20 years continues to go down. That income, at this point, is below \$25,000 a year for the people who are filing for bankruptcy.

Why do people file for bankruptcy? Some of them may have calculated how they can come out ahead by doing it. But look at what happens in most cases. Older Americans are less likely to end up in bankruptcy than younger Americans, but when they do file, 40 percent of them give medical debt as the reason for filing. Elizabeth Warren of Harvard tells us, overall, 46 percent of the people filing for bankruptcy do so because of medical debt.

We spent a lot of time on the Senate floor talking about hospital bills and prescription drug bills. When people become so overwhelmed by a catastrophic illness, they end up in bankruptcy court.

Both men and women are more likely to declare bankruptcy following divorce. That is the second instance in people's lives, divorces. They, of course, end up with a situation where people have to file because they can't make ends meet. The spouse who has the responsibility of raising the children may find herself in bankruptcy court.

The way this bill is written, there is not adequate protection for those women. That is why most women's groups, as well as consumer groups, oppose this bill as written.

Of course, unemployed workers who lose their jobs; that is the third instance that drives people into bankruptcy court.

So you find over and over again that the catastrophic events of a lifetime force people into bankruptcy court. Most of them do not go there because they want to. They are forced into that situation. This bill does not help them, does not protect them. Basically, it provides more power for the creditors and less power for the debtors who find themselves in these awful circumstances.

An interesting thing has occurred since this debate started 3 or 4 years ago. There was a lot of complaints about the number of bankruptcy filings going up in America in a time of prosperity. That was true. It is a strange thing, but people get overconfident and they get too far in debt, and they can't get out or they run into one of the three catastrophes that I mentioned. But something has happened.

In the first 37 weeks of this year, 861,846 people filed for bankruptcy. That is a lot of people. But basically the number of bankruptcy filings is on a decline. According to a study by the University of Maryland's Department of Economics, "Remarkably, there have been 138,000 fewer personal bankruptcies in the current year to date than during the corresponding period of 1998, a cumulative decline of greater

than 15 percent in the per capita bankruptcy rate." So that says to us, the explosive growth of bankruptcies has turned around. I cannot tell you exactly why, but that was one of the reasons why we even started discussing this bill.

It was told to us by the White House and the chief of staff of the President, John Podesta, the President will veto this bill as written. I hope he does. I hope those who support meaningful bankruptcy reform, balanced bankruptcy reform, will realize we cannot go through this process on a slam dunk, take it or leave it; Republicans will meet and decide—and Democrats will be left out—and pass a bill of this significance.

The groups that oppose this include not only the AFL-CIO, representing working men and women across America, but also NARAL, the National Partnership for Women and Children, the Leadership Conference on Civil Rights, the Religious Action Center, the Consumers Union—virtually every one of them—75 law professors from across the country who have tried to take an objective look at this bill, even groups from my own home State of Illinois. The Bankruptcy Center, which over the past 3 years has filed over 6,000 bankruptcies on behalf of their clients, has written me with their concerns about the bankruptcy bill.

So it comes down to this. We have a lopsided bill, perpetrated as part of a political process around here that is becoming too common, where they take a bill that has nothing to do with bankruptcy and shove the contents into it. And the Republicans dictate what will be in it and do not even invite the Democrats to participate in the discussion, bring it to the floor and say: Take it or leave it.

The credit industry that wants this bill refuses to concede the most basic concessions to us when it comes to the disclosures they would make on credit card solicitations and the monthly statements on the bill so that consumers can make a rational choice about how much credit they can handle. They basically have told us: This is it; take it or leave it.

I think we should leave it. It is time for us as a Nation to say, yes, we can reform bankruptcy but do it in a balanced fashion.

I salute my colleague, the Senator from Minnesota, for his leadership. I hope colleagues on both sides of the aisle will think twice and join me in voting against cloture. This bill needs further debate, the debate it did not have in conference committee. I hope we can come up with a better work product.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I will take 1 minute because our leader is on the floor.

I thank Senator DURBIN. I only heard part of what he said but the conclusion especially. I will build on what he said, except I won't do it as well.

Whatever Senators think about the content of this bill—and there is much to question—it is a much worse bill than the bill passed by the Senate before. Senator DURBIN has more credibility on this because he worked on the original bankruptcy bill and was responsible for much of its content which was much better than what we have seen in recent days. This is a mockery of the legislative process. Any minority, any Senator, anyone who loves this institution, can't continue to let people in the majority take a conference report, gut it, and put in a whole different bill, and then bring it here and jam it down everybody's throats. I certainly hope Senators who care about this legislative process, and who care about the rights of the minority and about a public process with some accountability, will at least vote against cloture. I think that is almost as important an issue as the content, in terms of the future of this body. I am not being melodramatic about it. I hope we will have good support in the vote against cloture, much less the vote against the final product. I hope tomorrow we will be able to stop this.

I yield the floor.

The PRESIDING OFFICER. The minority leader.

LABOR-HHS NEGOTIATIONS

Mr. DASCHLE. Mr. President, I will use my leader time to depart from the ongoing colloquy with regard to the cloture vote on the bankruptcy bill to talk about the status of negotiations on the Labor and Education bill that has been the subject of a good deal of discussion over the last several days.

I think the headlines give us the current state of affairs with regard to the bill probably as succinctly as any headline can. The Washington Post, from a front page story above the fold this morning, simply stated the fact: "Budget Deal is Torpedoed by House GOP. Move by leadership angers negotiators on both sides." That was the Washington Post.

The Los Angeles Times said it as well in their headline: "GOP Leaders Scuttle Deal in Budget Battle." They go on to describe exactly what happened in the budget battle on education over the course of the last several days.

The Washington Times had virtually the same headline, which simply read: "House Leaders Spike Deal On Budget."

The only word missing in most of these is the word "education." Because that is what the budget was about, the fight was about what kind of a commitment to education we ought to be making in this new fiscal year, now well underway. This is the last day of Octo-

ber. Of course, the fiscal year began on the first day of October. While the headlines didn't say it, this is what they were talking about.

We had a bipartisan plan that was worked out over the last several days with great effort on the part of Chairman STEVENS and Chairman YOUNG, certainly on the part of Senator BYRD, Senator HARKIN, Congressman OBEY. They worked until 2:30 Monday morning to craft what arguably could have been the single most important investment we will make in education in any fiscal year in the history of the United States. That is quite a profound and dramatic statement. I don't think it is hyperbole because we were prepared to invest more in education, more in smaller classes, more in qualified teachers, more in modern school buildings, more in afterschool programs, with a far better accountability program, with increased Pell grants, with more investment for children with disabilities and those preparing to go to college than we have ever made in a commitment to education in our Nation's history. That was what was on the table.

Of course, as we negotiated these very complicated and controversial provisions dealing not only with education but whether or not we can protect worker safety, all of those issues had to be considered very carefully. It was only with the admonition of all the leaders to give and to try to find a way to resolve our differences that we were able ultimately to close the deal, resolve the differences, and move forward with every expectation that the Senate and House would then be in a position to vote on this historic achievement as early as Tuesday afternoon.

That is what happened.

So instead, today we are debating cloture on the bankruptcy conference report when we could have had an incredible opportunity to put the pieces together to give children real hope, to give school districts all over this country for the first time the confidence they need that they can address the myriad of problems they are facing in education today; to say, yes, we are going to commit, as we have over the last couple years, to ensure we have the resources to reduce class size and to hire those teachers and to break through, finally, on school modernization and school construction. We could have addressed the need for 6,000 new schools with the modernization plan that was on the table when the collapse occurred.

I come to the floor dismayed, disheartened, and extraordinarily disappointed that this had to happen, that the House leaders, House Republican leaders, spiked a deal that could have created this historic achievement.

What do we tell the schoolteachers? What do we tell the students? What do we tell all of those people waiting pa-

tiently and expectantly, who are hoping we could put partisanship aside and do what we came here to do. Forget the rhetoric, forget the conflicts, forget all the things we were supposed to forget in bringing this accomplishment about.

I don't know where we go from here, but this is part of a pattern. It isn't just education. There is an array of other issues. And perhaps this is an appropriate day to remind my colleagues of, once again, the GOP legislative graveyard. We can put up, perhaps, another tombstone today.

I think we can still revive this. Somehow I think there is still a possibility that we can do this. I don't know if it will happen this week—I don't know when it will happen—but I can't believe we are going to turn away from having accomplished what we could have accomplished with all of this.

Everybody understands that we may not have another chance. I am not prepared to put education into the legislative graveyard Republicans have created. But there isn't much chance we are going to deal with pay equity this year. There is no chance we are going to deal with campaign finance reform.

Let us make absolutely certain that when we come back early next year, we enact the Patients' Bill of Rights. That is a tombstone for the 106th Congress. Hate crimes, judicial nominations, the Medicare drug benefit, gun safety: all are tombstones to inaction. All are a recognition of the failure of this Congress to come to grips with the real problems our country is facing, a realization that now there is not much we can do anything about, except to rededicate ourselves to ensure that we will never let this Congress again take up issues of this import and leave them buried in the legislative graveyard.

Let us hope that we can revive school modernization and smaller class size. Let us hope that somehow, in the interest of doing what is right—we recognize how close we were Monday night, we recognize how important it is that we not give up, we recognize how critical it is that something as important as education will not be relegated to this legislative graveyard, or any other. Let us hope that in the interest of our children, in the interest of recognizing the importance of bipartisan achievement in this Congress, that we will do what is right, that we will take these headlines and turn them around and change them into headlines such as "GOP Leaders And Democratic Leaders Agree on Budget Deal," or "Democratic Leaders And Republican Leaders Agree To Historic Education Achievement"; with editorials that would say to the effect that, at long last, we have given children hope all over this country and we have given schools the opportunity to reduce their class size and improve educational quality without exception.

That is still within our grasp. I must say, the tragedy of all tragedies would