



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 107<sup>th</sup> CONGRESS, FIRST SESSION

## SENATE—Tuesday, July 17, 2001

The Senate met at 9 a.m. and was called to order by the Presiding Officer, the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

God of peace, we confess anything that may be disturbing our peace with You as we begin this day. We know that if we want peace in our hearts, we cannot harbor resentment. We seek forgiveness for any negative criticism, gossip, or destructive innuendos we may have spoken. Forgive any way that we have brought acrimony to our relationships instead of helping to bring peace into any misunderstanding among or between the people of our lives. You have shown us that being a reconciler is essential for continued, sustained experience of Your peace. Most of all, we know that lasting peace is the result of Your indwelling spirit. Your presence in our minds and hearts.

Show us how to be communicators of peace that passes understanding, bringing healing reconciliation, deeper understanding, and hope and communication.

In the name of the Prince of Peace. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODHAM CLINTON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, July 17, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mrs. CLINTON thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader.

### SCHEDULE

Mr. DASCHLE. Madam President, today the Senate will resume consideration of the Bankruptcy Reform Act. The prior agreement called for 3 hours of debate prior to a rollcall vote on cloture of a substitute amendment at approximately 12 o'clock today. There will be a recess for the weekly party conferences from 12:30 to 2:15. We expect to return then to the Energy and Water Appropriations Act today, with rollcall votes on amendments expected throughout the afternoon.

Last week the Senate confirmed 53 nominations. I don't know that there has been a week in recent times where we have accomplished that much with regard to nominations. I expect to continue that level of progress this week. There are currently 10 nominations on the Executive Calendar. Our caucus is prepared to move immediately on 8 of those 10. One of the remaining two, Mr. GRAHAM, already has a time agreement regarding his consideration. I expect to be able to dispose of his nomination between the energy and water appropriations bill, which we will resume after the bankruptcy bill is sent to conference, and the Transportation appropriations bill. I also expect to dispose of the Ferguson nomination at that time.

The legislative branch appropriations bill is on the calendar. The committee

staff has informed us that they know of no amendments. So we hope to be able to complete action on that bill as well this week.

If we can accomplish these items, including the Transportation bill, by the close of business on Thursday, then we will not have votes this Friday. If not, of course, we will then be on the bill on Friday with votes possible throughout the day.

That is the plan for the week. We will do bankruptcy this morning, energy and water this afternoon for whatever length of time it takes. Tomorrow we will do the Graham nomination, then the Transportation and legislative appropriations bills.

This will be a busy week but, I think, a productive week. Hopefully, we can accomplish a good deal by continuing to work together.

### BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 333, which the clerk will report.

The legislative clerk read as follows:  
A bill (H.R. 333) to amend title 11, United States Code, and for other purposes.

Pending:

Leahy/Hatch/Grassley amendment No. 974, in the nature of a substitute.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 3 hours for debate, 2 hours under the control of the Senator from Minnesota, Mr. WELLSTONE, and 1 hour to be equally divided between the chairman and ranking member of the Judiciary Committee or their designees.

The Senator from Iowa.

Mr. GRASSLEY. Madam President, I yield myself such time as I need from the time allotted to Senator HATCH.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I urge my colleagues to support the cloture motion to substitute the language

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

of S. 420 to H.R. 333, the House bankruptcy bill.

As we all know, the substitute amendment to the House bill is the text of the bill that passed the Senate on March 15 by an overwhelmingly bipartisan vote of 83–15. This bill went through hearings and markups in Judiciary, went through an extensive amendment process on the floor, so no one can dispute that this is a bipartisan bill that has gone through a bipartisan process in the Senate.

The bill has gone through the regular order and we should proceed to conference under the regular order.

There are a lot of reports out there that have distorted the truth about this bill. Many groups have said this bill is very controversial. That is not the case. I first started working on bankruptcy reform back in the 1990s, when Senator Heflin, now retired, and I set up a Bankruptcy Review Commission to study the bankruptcy system. This commission was not made up of any Members of the Congress. It was made up of experts in the area of bankruptcy to study the issue so that what we did in this Chamber, with their recommendations, would be done right.

The debate that set up the Bankruptcy Review Commission was prompted by small business and other small proprietors that had problems with individuals who were renegeing on their debts but then turned out, it seemed, to have the ability to pay their bills. The impact on these small businesses, obviously, was significant: Prices had to be raised for items; maybe some businesses went out of business. When that happens, employees are laid off. There is no sense having this economic condition, not because we want to deny people a fresh start, because it has been a policy of our bankruptcy laws to let people have a fresh start when they are in financial straits through no fault of their own—natural disaster, high medical bills, et cetera—but when people have the ability to repay, then they should not get off scot-free and cause employees of businesses that go out of business to lose jobs.

We want to be fair to everybody. You can't be fair to businesses and employees that lose their businesses and jobs when somebody who has the ability to pay bills gets off without paying those bills.

I was interested in what was going on in the bankruptcy system in the early 1990s when we set up this commission because of my concern about fundamental fairness.

Why should people get out of repaying their debts if they can pay them? The issue is not new. In fact, the issue of bankruptcy and personal responsibility has been debated since the 1930s, and Congress has made numerous attempts to decrease the moral stigma associated with bankruptcy. As in pre-

vious versions of the bankruptcy bill, the language in the substitute amendment is part of an effort to ensure that bankruptcy is reserved for those who truly need it, and that persons with the means to repay their debts should assume their responsibilities.

Some say this bill is unfair and unbalanced because it makes it harder for normal people to avail themselves of bankruptcy. This is just not true either.

First, the bankruptcy bill applies to everyone, rich and poor, and the premise behind the bill—that you should pay your debts if you can—does not discriminate against poor people. In fact, there is a safe harbor provision for lower income people. The bill specifically exempts people who earn less than the median income for their State. And for those consumers to which the bill does apply, the means test that is set forth in the bill is flexible, as it should be. It takes into account the reasonable expenses of a debtor as applicable under standards not set by me but issued by the IRS for the area in which the debtor resides. The means test permits every person to deduct 100 percent of medical expenses. The means test permits every person to deduct expenses for the support and care of elderly parents, grandparents, and disabled children. In addition, the means test would permit battered women to deduct domestic violence expenses and protects their privacy. Furthermore, the means test allows every consumer to show “special circumstances” to avoid a repayment plan, just in case there is something within this formula that just doesn't fit every particular family in America.

Let me again remind people about the enhanced consumer protections and credit card disclosures that are contained in the bill. The bankruptcy bill requires credit card companies to provide key information about how much a customer owes on his credit card, as well as how long it is going to take to pay off the balance by making just a minimum payment. We do that by requiring that the credit card companies set up a toll-free number for consumers to get information on their specific credit card balances.

The bill prohibits deceptive advertising of low introductory rates. The bill provides for penalties on creditors who refuse to renegotiate reasonable payment schedules outside of bankruptcy. The bill strengthens enforcement against abusive creditors and increases penalties for predatory debt collection practices. The bill also includes credit counseling programs to help avoid and break the cycle of indebtedness.

Let me remind colleagues about the provisions contained in this bill that will help women and children because there has been a dramatic change in the direction of this legislation when it

was introduced three Congresses ago until it now has reached the point where it is today. The bill before us makes family support obligations the first priority in bankruptcy. The bill makes staying current on child support a condition of discharge. The bill gives parents and State child support enforcement collection agencies notice when a debtor who owes child support or alimony files for bankruptcy. It also requires bankruptcy trustees to notify child support creditors of their right to use State support child support enforcement agencies to collect outstanding amounts due. The bill also permits battered women to deduct domestic violence expenses and protects their privacy in bankruptcy.

I also remind colleagues that we adopted a number of amendments in the Judiciary Committee and in this Chamber that make this a bipartisan bill. It started out as a bipartisan bill anyway, through the help of Senator TORRICELLI of New Jersey. If I am correct, I believe we adopted something on the order of 8 amendments in the Judiciary Committee and 30 amendments on the floor of the Senate. For example, the Senate adopted an amendment that, for the first time, would protect consumer privacy when businesses go into bankruptcy. Specifically, the Senate agreed that personally identifiable information given by a consumer to a business debtor in bankruptcy should have privacy protections. The Senate also created a consumer privacy ombudsman in the bankruptcy court.

The Senate agreed to amendments that expand farmer eligibility in bankruptcy and facilitate postbankruptcy proceedings for farmers. The list goes on. While I did not agree with all of the amendments adopted, the Senate went through a lengthy and fair process. That is why it got an 83–15 vote. The whole process doesn't need to be repeated now. Some of those 15 who voted against it won't give up, and that is their right under the Senate rules. But, eventually, an overwhelming majority in the Senate wins out. Maybe all the time a majority in the Senate doesn't win out, but eventually an overwhelming majority in the Senate wins out. And if it doesn't, it should. This is one of those times. So we need to go to conference now and iron out the differences with the House.

I am asking my colleagues to join me in supporting this bill. We need to send a message that people cannot use bankruptcy as a financial tool or an easy way out of paying their debt. The bill promotes responsible borrowing and provides financial education to financially troubled consumers. It also provides some of the more proconsumer provisions relative to credit card companies in years. We have not dealt with these issues in years. This bill deals with it and it should. We all recognize that the proliferation of advertising for

credit cards and the junk mail we get is part of the cause that we have people in bankruptcy.

It also creates new protections for patients when hospitals and nursing homes declare bankruptcy. The bill makes permanent chapter 12 bankruptcy for family farmers and lessens the capital gains tax burden on financially strapped farmers who declare bankruptcy. This is a bill that the Senate passed with this overwhelming margin, which my colleagues probably get tired of my mentioning so many times, but it was 83-15. So I think it is just common sense. Maybe common sense doesn't rule around this institution enough, but it is common sense that we move on to the next step. I urge my colleagues to vote in support of the cloture and in support of the Leahy-Hatch-Grassley substitute amendment.

I yield the floor, and since there are no other Members present, I suggest the absence of a quorum and that it be charged to Senator WELLSTONE. I have been advised by staff that that is the proper thing to do.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WELLSTONE. Madam President, my understanding is that there may be a number of other Senators who are coming to the floor to speak in opposition to the bankruptcy bill. Senator DURBIN may try to come down. So Senator DURBIN and others know, when they come I will simply break my remarks and others can speak at their convenience.

At the beginning of last week, the majority leader moved to proceed to the bill and I objected. Then we had a cloture vote on the motion to proceed. In the time I had, I implored, called upon, begged the Senate to step back from the brink and to decline to go to conference with the House on this so-called bankruptcy reform. I believe we would be making a grave mistake.

I am trying to figure out a way not to repeat all the arguments I made last week. I will simply say I think this is a measure we are going to deeply regret. There are a lot of people—Elizabeth Warren comes to mind, law professor at Harvard—who have done some very important scholarship at Harvard in this area. I don't know that I can think of a single law professor who has argued in favor of this bill. Maybe there is someone somewhere. The opinion of the scholars in the field, the opinion of people who work in the field,

is almost unanimous that this is a huge mistake.

We need to understand that bankruptcy is something most families do not think they will ever need. They do not think they will ever need to file for bankruptcy. But it is really a safety net, not just for low-income families but for middle-income families as well.

Fifty percent of the people who file for bankruptcy in our country today do it because of a medical bill. You have a double whammy. It is not just the situation where you have the expense of the medical bills but also it may be that, because of the illness or injury, you yourself are not able to work so you are hit both ways, or it might be your child's medical bill, but also you may not be able to bring in the income because you are not able to go to work because you need to be at home taking care of your child. That is 50 percent of the people. We are not talking about deadbeats.

Frankly, most of the rest of the cases can be explained—it should not surprise anybody—by loss of job or divorce. These are the major explanatory variables why people file for bankruptcy, file for chapter 7. The irony of it—and I tried to make this argument last week as well—is that for a long time my colleagues were facing a problem that did not exist; that is to say, they were talking about all the abuse and all the ways in which people were gaming the system in American bankruptcy, but they came out with a record that said that is 3 percent of the debt. So let's come out with legislation that deals with the 3 percent, but let's not have legislation where people who find themselves in terrible economic circumstances no longer are able to rebuild their lives, all because of a small number of people who abuse the system.

Moreover, actually the bankruptcies were going down. So quite to the contrary of the claim we had this rash of bankruptcies and people no longer felt any stigma or shame and people were no longer responsible, none of it really held up very well if you closely examined the arguments.

Now what we have, in case anybody has not noticed, is an economy that is leveling off with a turn downward. It is not the boom economy we saw while the Presiding Officer's husband, President Clinton, was President of the United States of America. It is a different economy now. There are going to be more people who will lose their jobs and more people who will be faced with these difficult economic circumstances through no fault of their own. We are going to make it well nigh impossible for them to rebuild their lives.

Madam President, I argued last week that we are hardly talking about deadbeats. This bill assumes people who file for chapter 7 are deadbeats and they

are not. The means test aside, there are 15 provisions in the House and Senate-passed bills that will affect all debtors, regardless of their income—15 provisions. The means test will not protect them. The safe harbor will not protect them. These provisions are going to make bankruptcy relief more complicated, more expensive, and therefore harder to achieve for debtors—again, regardless of income. That means they will also fall the hardest, in terms of the people who will be most affected by this legislation, on low- and moderate-income debtors.

The irony is that those who advocate for this bill justify it by arguing that we need to go after the wealthy deadbeats. But if the cost of filing for bankruptcy doubles, which is exactly what it does in this bill, who gets hurt the most? A middle-income family who had to save for 6 months, under current law, to pay for an attorney and for filing fees, or a multimillionaire like the ones the proponents cite in this statement? It just makes no sense.

There will be no problem for millionaires who are gaming the system. They are not the people who get hurt by this legislation. This legislation is the most harsh on the most vulnerable.

I also argued and tried to make the case that this couldn't be a worse time to do this in terms of where the economy is headed.

So while the bill would be terrible for consumers and for regular working-class families even in the best of times, its effects will be all the more devastating now that we have a weakening economy.

Colleagues, you are going to regret this.

It boggles the mind that at a time when Americans are most economically vulnerable and when they are most in need for protection from financial disaster we would eviscerate the major fiscal safety net in our society for the middle class. It is the height of insanity that we would be contemplating doing what we are doing right now given what is happening to this economy.

Colleagues, I couldn't support this legislation in the best of times. Even in the sunniest of economic circumstances, there are many families who are down on their luck and who are sent to the sidelines. Bankruptcy relief lets these families rebuild their lives again. It is a little bit like "there but for the grace of God go I."

I think Time magazine had a series which was just a blistering attack on this bill. They did it in two ways. They did it, first of all, by talking about what this legislation means in times—which quite often on the floor of the Senate we don't make those connections as we should—to a lot of these families and what happened to these families because of their economic circumstances. They did not ask that

their child be stricken by a terrible illness. They did not ask for the physical pain. They did not ask for the economic pain. But we are going to make it harder for them to rebuild their lives. People do not ask to be laid off work. People do not ask that their families be shredded because there is a divorce. You wish it would not have to happen. But it does happen. Sometimes someone is at fault and sometimes no one is at fault, but it happens.

It is usually the woman who is the one taking care of the children, and she doesn't have the income she once had. These are the kinds of citizens who file for bankruptcy relief. That is why every labor organization, civil rights, women's, and consumer organizations in the country and more—religious organizations—oppose this legislation.

This legislation is a testimony to the absolutely sickening power of the financial services industry in Congress. We wouldn't be doing this otherwise.

I did not say this is a one-to-one correlation. Anyone can play the game that people vote this way because they are in the pockets of the financial services. That is not the argument that I make. Everybody can say that about everybody who votes in the Senate on every issue.

What I am saying is not at the personal level but at the institutional level in terms of who has the lobbying coalition, who is ever present, who has all the financial resources, and who has the political power. This industry has a heck of a lot more power than "ordinary consumers and ordinary citizens" who are the very people we ought to be representing.

I want to make it clear 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 working families. Sure, in the short run big banks and credit card companies may take their profits. But in the long run, it is going to be ordinary families and entrepreneurs—all businesspeople—who take the risk and who are going to pay the price.

This isn't a debate about reducing the high number of bankruptcies. In no way will this legislation do that. Indeed, I would argue that by rewarding reckless lending that got us here in the first place, you are going to see more consumers overburdened by debt.

By the way, there isn't hardly a word in this legislation that calls on these credit card companies to be accountable. It is all a one-way street.

This debate is about punishing failure—whether self-inflicted or uncontrolled and unexpected. This is a debate about punishing failure. If there is one thing that our country has learned, punishing failure doesn't work. You need to correct the mistakes. You need to prevent abuse. But you also need to

lift people up when they stumble and not beat them down.

I thought I made a pretty good case last week. I didn't think it was really refuted. The proponents of the bill came down and they did their thing, but I don't think they did much damage to my argument.

What did the proponents of this legislation say? We need to talk about this. It might be that it is going to go through. But, darn it, there ought to be some discussion before the Senate about what we are doing.

What do the proponents say? My friend from Alabama got up and complained that I was taking on or presenting this critique of the big banks and credit card companies. He said this is a bankruptcy bill, and it only deals with the bankruptcy code and bankruptcy court reform. Therefore, holding the lender accountable is not appropriate.

That was one criticism. It sounded a little bizarre to me, as much fondness as I have for him. I think it sounds kind of bizarre to most commonsense Americans in Minnesota who reach in their mailboxes every day of the week and pull out a handful of credit card solicitations. But apparently some of my colleagues see no connection whatsoever between the irresponsibility of the lenders and the high number of bankruptcies. That is preposterous.

The reason colleagues do not see any connection between the irresponsibility of the lenders and the high number of bankruptcies is because they don't want to see any connection because these folks have a lot of clout and a lot of power.

Both the House and the Senate bills basically give a free ride to banks and credit card companies that deserve much of the blame for the high number of bankruptcy filings because of their loose credit card standards. Even the Senate bill, which is better than the House bill, does very little to address this problem. There are some minor disclosure provisions in the Senate bill. But even those don't go nearly as far as they should. Lenders should not be rewarded for reckless lending.

Where is the balance? If you are holding a debtor accountable, why are you not holding lenders accountable in this legislation?

Let me just give you some examples of some of the poor choices that can be made. In this particular case I am talking about the lenders—not the borrowers. Here are some real world examples.

In June of 1999 the Office of the Comptroller of the Currency reached a settlement with Provident Financial Corporation in which Provident 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 an-

nual 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, I say to my 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.

That is unbelievable. I will tell you something. With the one-sidedness of this legislation, there is no wonder. Again, I am not attacking colleagues at a personal level but at an institutional level. No wonder ordinary people think the political process in Washington is dominated by powerful folks and that powerful interests are opposed to them.

How else can one explain the complete lack of balance? July 2000, North American Capital Corporation, 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.

Another example: October 1998, the Department of Justice brought an anti-trust 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.

To make the argument that when we look at bankruptcies we only hold those who are the lenders accountable and not the creditors makes no sense whatsoever.

The goal of this bill was supposed to be to reduce bankruptcies. That is why the big banks and credit card companies have been pushing for it. They are the only ones pushing for it. I am hard pressed to find one bankruptcy judge in the United States who supports this legislation. I am hard pressed to find one bankruptcy expert in the United States who supports this legislation. This legislation was written by and for the lenders. It is that simple.

Maybe it is different in Rhode Island; I doubt it. I can't remember a conversation in a coffee shop anywhere in Minnesota, be it metro or be it in

greater Minnesota, out in rural Minnesota, where people have rushed up to me and said: What we want you to do is please support that bankruptcy bill which will make it more difficult for people who are going under because of medical bills or because they have lost their job or because of a divorce in their family to rebuild their lives. Please, Senator, that is our priority.

I hear people talking about children and a good education. I hear young working people talking about affordable child care. I hear elderly people talking about the price of prescription drugs. I hear elderly people terrified, along with their children, about what will happen to them at the end of their life if they are faced with catastrophic medical expenses. I hear people talking about all of the health insecurity they feel because they don't believe they have good coverage or because it costs much more than they can afford.

I hear veterans who are concerned about veterans health care. This Thursday we are going to have a hearing in the veterans committee, which Senator ROCKEFELLER chairs, on homeless veterans. I am guessing that probably a third of all the homeless males—too many are women and children—are veterans, and most of them are Vietnam vets. Many of them are struggling with PTSD. Many are struggling with substance abuse. It is a scam that these veterans are homeless in America.

I hear discussion about why can't we do better for veterans. I hear concern about the environment. I hear concern about energy costs. I hear concern about a fair price in farm country. I hear small businesspeople talk to me about how hard it is to have access to capital. I don't see the ground swell of support all around the United States for this piece of legislation.

What in the world are we doing debating this piece of legislation in the Senate today? Why is this legislation out here? What kind of good does this do for the people we represent? It does a lot of good for the credit card companies. It does a lot of good for the financial services industry. I know that. I would just like somebody to explain to me how it does a lot of good for ordinary people, those folks who don't hire the lobbyists, the people who don't have the big bucks, the people we see every day. I hope we see them every day when we are back home.

It is ridiculous on its face that we can divorce the behavior of the credit card companies from the high number of bankruptcies. Indeed, all the evidence points to the fact that the lenders and their poor practices are a big part of the problem. It is just outrageous we don't take them on.

I call this going down the path of least political resistance. It is easy to pass legislation that has such a cruel and harsh effect on people who are

being put under because of medical bills or because they have lost their jobs. They don't have that much economic clout, and they don't have that much political clout. As a matter of fact, I will come up with an amendment on our bill sometime when there is an appropriate vehicle that will go after the credit card companies and the lenders on their lending practices; we will have a vote on it. Then it will be more difficult because we have to go against those interests, but we ought to at least have some balance.

In the debate last week, my friend from Alabama stood up and said that the core of this bill is the means test. All the means test does is force those folks with high incomes to go to chapter 13. What is wrong with that? Therefore, the bill doesn't hurt low-income people.

The means test is only 9 pages of a 200-page bill. If the means test were all this bill consisted of, then it would have passed 12 years ago. We have been trying to hold this matter up for 2½ years, something such as that.

The bankruptcy bill purports to target abuses of the bankruptcy code by wealthy scofflaws and deadbeats who make up 3 percent of the filers, according to the American Bankruptcy Institute. Yet hundreds of thousands of Americans file for bankruptcy every year, not to game the system but because they are overwhelmed by medical bills or job loss or divorce.

Unfortunately, there are at least 15 provisions in both bills that make it harder to get a fresh start regardless of whether the debtor is a scofflaw and/or a person who must file because they are made insolvent by their medical debt. These include, but are in addition to, the means test.

Neither the means tests nor the safe harbor in this bill applies to the vast majority of the new burdens placed on debtors under both bills. Debtors will face these hurdles to filing regardless of their circumstance.

The final point made by proponents last week was actually made by several Senators. I think in some ways it is the most insidious. The argument advanced is that the bill is good for women and children because it places child support as the first priority debt to be paid in bankruptcy.

First, it is the case that this is a useful change in the law as far as it goes. Unfortunately, it doesn't go very far. Child support is already nondischargeable in bankruptcy. In theory under this bill, a woman who is owed child support is more likely to receive that support from her deadbeat husband while he is going through bankruptcy. But once he emerges from bankruptcy, the other provisions of these bills will make it less likely that his ex-wife or kids will get anything.

Under current law, an ex-spouse postbankruptcy often has few other

debts; they have all been discharged. The child support is nondischargeable. After his other debts are gone, the ex-spouse can devote more of their income to their support obligations. In this way, the current law actually helps women and children because they don't have to compete with other more sophisticated creditors postbankruptcy. But under this bill, the ex-spouse will emerge with much more debt than under current law. Less credit card debt is dischargeable. Creditors will have more leeway to force reaffirmations, agreements where debtors reaffirm their intention to pay back debt, and so the debt is not wiped out in bankruptcy.

The net effect is that women and children whose spouses file for bankruptcy under this bill will have to compete more than ever with auto dealers, with big retailers such as Sears, and with credit card companies for the paycheck of their ex-husband. Do we think they are going to do well?

The Senate giveth with one hand and taketh away with the other. That is part of the reason that 31 groups that are devoted to women's and children's issues oppose this bill.

I can't think of one women's or children's organization that supports this legislation.

May I make one other point. There is another reason. That is, one group of citizens—in fact, it is the fastest growing number of citizens who file for bankruptcy—are women. Since 1981, the number of women filing increased 700 percent. Divorced women are the ones who end up supporting the children. Income drops.

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. The "safe harbor" in the House bill, 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—are you ready for this—even if they are separated, the spouse is not filing for bankruptcy, and the spouse is providing no debt for the debtor and her children. That is figured in as the mother's income.

I will tell you something. This is one harsh, mean-spirited piece of legislation, and I am stunned that so many Senators are supporting it.

Now, while I am waiting for Senator DURBIN to come to the floor, let me talk about the pending amendment to this bill, which is actually the text of the bill that the Senate passed earlier this year. Here is where I will give the Senate some credit. We started this year with a truly terrible, completely

one-sided bill. It was basically identical to the House version. The committee marked it up over the chairman's objections and made improvements. Once it was considered by the Senate, additional improvements were made. The Senate bill is still a very bad piece of legislation. Unfortunately, most of what we have accomplished has been nibbling around the edges. But it is better than the House bill; that is clear.

The Senate bill has better credit card disclosure provisions. They are inadequate, but the House is completely silent on that. The Senate bill allows more credit to be discharged, thanks to an amendment by Senator BOXER. The Leahy amendment fixed the "separated spouse problem" with the safe harbor. Why there was even a fight on that is beyond me. The House bill has no such fix.

The Senate bill is less harsh when it comes to filing chapter 13 cases. We also limited some but not all of the hurdles this bill creates in the successful filing of chapter 13 cases.

A Feingold amendment adopted in committee protects, to some degree, renters from eviction if they pay the overdue rent when they file for bankruptcy.

Very significant is the Kohl amendment on the homestead exemption. With its adoption, the Senate takes on wealthy debtors who file frivolous claims and shield their assets in multimillion-dollar mansions. This is a real abuse of the current system and it ought to be corrected. Five States, under current law, allow a debtor to shield from creditors an unlimited amount of equity in their home. In fact, the Florida Supreme Court, in a case last month, established that even if a debtor uses Florida's unlimited homestead exemption for nakedly fraudulent purposes, there is nothing the courts can do. You would think that with all the bluster of the proponents of the bill about curbing abuse of the deadbeats they would rush to close this loophole. Not so. Senator KOHL had to drag the Senate kicking and screaming to plug this obvious gap.

Unfortunately, the House and the President have drawn a line in the sand over this issue. While the House of Representatives—or at least the majority party in the House—and the President of the United States of America support harsh, punitive hurdles to a fresh start for low- and moderate-income folks who virtually nobody claims are abusing the system, they are unprepared to go to the mat for folks who want to protect their mansions and who are openly flouting their obligation.

May I repeat this again. The Republicans in the House of Representatives and the President of the United States support a very harsh and punitive piece of legislation making it very difficult

for people to rebuild their lives—people who have been put under because of medical bills, for example. On the other hand, they have no problem with folks who want to protect their property and protect their income by buying these multimillion-dollar mansions in States in the country and shielding themselves from any obligation.

It doesn't get any weirder than that—actually, it does. It does if the Senate conferees—and I don't have any illusion; this bill will go to conference—knuckle under to the House on any of these issues. I think the Senate conferees should be trying to improve this bill further in conference. I think that is Senator LEAHY's intention, and I salute him for it. But I certainly hope you can get the backing of the Senate conferees.

I have to worry about what is going to happen in the conference committee. Look at the past. Look at the evidence from the past. Since 1998, the House has passed terrible bills. The Senate has passed better bills. Every time it emerges from conference, it is a nightmare. I hope that doesn't happen again, and I certainly hope all of the Senate conferees will stick with the Senate position on the Kohl amendment, the Schumer amendment, and other efforts which have made the bill at least slightly better.

This time, I am sorry to say, this legislation is much more likely to become law. With this President, this ridiculous giveaway to the big banks and credit card companies is going to make it. To the everlasting credit of President Clinton, he vetoed this legislation. Look, I was certainly one of his critics in the Senate. I have to admit that sometimes as I look at the values and policy preferences of this administration, I certainly miss the Clinton administration. I certainly do. But to give credit where it is due, President Clinton vetoed this legislation.

The White House has all but said they will sign the bill, as long as it protects wealthy deadbeats and their mansions. That is the position of the White House: We will sign this piece of legislation as long as you guarantee us that you will protect the wealthy deadbeats and their mansions—as in Texas.

I am afraid, given what wealth and power get you in this town, given the kind of backing this bill has, and given that some of the biggest investors of both parties are involved, it is going to be far too easy for the majority of the conferees to go along with this proposition. I am sorry, I am going to repeat this again. People in Minnesota—I do no damage to the truth—and I think people in Rhode Island do not know about this legislation or any of the details. I promise you, they will be deeply offended with this proposition, that a whole lot of people—because a few people game the system. True, a small percentage. Every independent study says

that regarding bankruptcy. If we pass this piece of legislation that basically makes it impossible for a lot of good people, middle-class people, low- and moderate-income people, who, through no fault of their own—there but for the grace of God go I—through the loss of job, medical bills, you name it, find themselves in brutal circumstances, this legislation is going to make it difficult to rebuild their lives.

At the same time, this piece of legislation, because of the insistence of the President and the Republicans in the House of Representatives, is going to protect wealthy deadbeats and their mansions and enable people to shield their assets—not the people I am talking about but the wealthy people. Does that make any sense whatsoever? That offends me as a Senator from Minnesota.

I hope I am wrong. I hope the Democratic conferees in the Senate will support Senator LEAHY, the chairman. He has done good work on this bill under very difficult circumstances. He did good work with an equally divided Senate. I don't agree on the final product, but I am not going to ignore some of the improvements. I just hope the Democrats in the Senate do not let him down.

Mr. President, I will conclude on this note. Last week, the Senate voted to move forward to conference. The Senate voted overwhelmingly. I think it is fair to say that. The die is cast. It is going to happen. I can block the Senate, I suppose, for a week, but the result will be no different. I know that.

I came to the Chamber last week. I have come to the Chamber today. I will have another amendment probably postcloture, but I do not know how to stop this any longer. I do not know of any way to stop it.

Let me say this: I will have an amendment that is going to call for a GAO study of this bill over the next 2 years, and I say to Senators, there should be 100 votes for it. I will wait to use my hour after the vote to talk about it, but there should be 100 votes for it.

I am going to go over each of the arguments and ask GAO to look at them, and we will see who is right or wrong. I am not saying that in some macho way. I am saying at a minimum we ought to be willing to have an evaluation of this legislation and what it is going to do to people.

I do not regret holding up this legislation. Maybe it comes with being 5 foot 6 inches. I am almost defiantly proud, along with the help of other Senators, in stopping this, in blocking it, in fighting it. I do not regret it at all. This bill should not be moving forward. I do not think it should be a priority. I am in disagreement with the Senate majority leader on this question. I think it is too harsh and too one-sided. Unfortunately, it is a perfect

reflection of who all too often has the power in the Nation's Capital. With the economy heading in the wrong direction right now and slowing up and people losing jobs and people being underemployed—that is to say, they are not counted among the ranks of the official unemployed, but they are not working at the kinds of jobs they would be working at with a better economy, and people under more economic pressure and more economic strain—this is the worst time to pass this legislation.

In fact, I do not know—maybe this is a stretch. I read an article the other day in the New York Times that a number of economists were expressing their concern that it has been the consumer spending which has kept the economy going because a lot of business investment is way down now. They are saying they do not know how much longer consumers will continue to spend. There is a fair amount of debt.

I imagine this legislation may, in fact, add to our economic troubles. People may be even more skiddish about consuming; they may be even more reluctant to be buyers, especially if they are going to wind up in the poorhouse for the rest of their life.

This legislation does not make sense on economic grounds. It does not make sense in terms of what people in our States are asking us to do and what our priorities should be. This legislation should not be before the Senate. I am in disagreement with my majority leader on this question. This legislation violates the basic standard of elementary justice. It is going to pass, but it should not.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the quorum call be charged to both sides.

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

Mr. WELLSTONE. My understanding, Mr. President, is Senator HUTCHISON of Texas and Senator BROWNBACK want to speak, and if they do, I allocate to each one of them 10 minutes. My understanding is Senator DURBIN also wants to speak. I allocate to the Senator the rest of my time.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Under the previous order, the Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I rise today, as I did earlier this year, in opposition to the Senate-passed bankruptcy bill, Senate bill 420. It is likely this week we will appoint conferees and start the debate about this bankruptcy bill.

Let me say at the outset, I support bankruptcy reform. A few years ago, as a member of the Judiciary Committee, I was the ranking Democrat on the subcommittee that produced a bankruptcy bill. At the time, we saw a rather dramatic increase of public bankruptcy filings across America, and there also appeared to be, and I believe there are, serious abuses where people are going to bankruptcy court to be discharged from debts when, in fact, they could pay many of those debts. When a person is able to pay their debts and does not, for whatever reason, the economy absorbs it and all of us as consumers are taxed or end up paying the cost of those unpaid debts. It is passed along in one version or another.

So bankruptcy reform in and of itself is warranted and should be part of our agenda. I was happy to be part of the creation of a bill a few years ago which dealt with changing our bankruptcy code.

Bankruptcy law is one of the most arcane laws in America. Although it affects probably more Americans than we imagine, it is an area of the law to which very few people pay attention. Almost by accident, I took a course in bankruptcy law in law school at Georgetown. As a practicing attorney in Springfield, IL, I was appointed as a trustee in bankruptcy for a local truckstop that was going bankrupt. Those were my two brushes in the law with bankruptcy. Other than that, I didn't include it in my practice, and I paid little attention to it. When the time came to debate it in the Senate Judiciary Committee, it turned out I had more experience in bankruptcy law than any other Senator. It is a rather obscure area of the law that, unless it is focused on, is difficult to understand, and more difficult to suggest meaningful reforms that make a difference.

What I tried to do in the earlier debate on the bankruptcy law was to suggest that if there are abuses, there should be reforms so people do not abuse the bankruptcy process. But we should also look to the other side of the ledger. There are abuses on the credit side, on the financing of debt side, which also should be addressed as part of bankruptcy reform. I believe this balanced approach, saying don't go in and abuse the bankruptcy courts, is

a good one as long as we couple it with an admonition, warning, a prohibition in the law, if necessary, against those who abuse the credit side.

I still remember and I have repeated it often, those who came to see me first about bankruptcy reform—these are people from banks and financial industry and credit card companies—said it used to be filing bankruptcy was something of which people were ashamed. They didn't want to do it, they didn't want to admit they had done it. They were embarrassed by the experience. Now, in the words of those who came to see me, bankruptcy has lost its moral stigma.

I am not sure if that is altogether true. In fact, I question whether it is true except in isolated cases. I said back to them: Do you believe there is a moral stigma attached to credit practices, as well?

The fact is, when I went to a college football game in Illinois and went up the ramp, and as I started to go into the stadium in Champaign-Urbana there stood someone offering me a free T-shirt for signing up for a University of Illinois credit card sponsored by one of the major credit card companies. Let me make it clear, they were not looking for me at the top of the stairs. They were looking for students to try to get them to sign up for credit cards and get deeper into debt. Where is the moral stigma there? Who is asking the hard question whether that student can pay off a debt?

At the University of Indiana a few years ago, the dean of students said the No. 1 reason kids were dropping out of school and taking some time away from school was to pay off credit card debts. So I say to the credit industry, when we are talking about moral stigma, do you think twice about offering credit cards?

I suggest to anybody listening to this debate, go home tonight and open your mail. How many new solicitations will you receive for a new credit card? Literally hundreds of millions of them descend on America. Are hard questions asked whether a person is credit-worthy? Perhaps. But in many cases, no.

You see people getting deeper and deeper into debt, finally being pushed over the edge into bankruptcy court. I suggest as part of this bankruptcy debate, let's ask the question on both sides: Who is abusing the bankruptcy court? But also, who is abusing when it comes to offering credit in the United States?

I think, to address bankruptcy reform in that context is an honest approach. It is one that I think is sensible and balanced. The bill I supported that passed this Senate a few years ago with 97 votes was a balanced bill. This bill we have before us is not. This bill, which has been pushed through by the

credit industry, by the financial institutions, sadly, does not have the balance that I think is absolutely essential.

I had hoped we would be able to come up with such a bill. That has not happened. We had a conference committee after we passed this bill a few years ago. It was a conference committee in name only because what it boiled down to was the Republican members of the conference committee did not invite the Democrats to attend. They sat down with the financial industry and wrote a bill and said take it or leave it, and we left it, as we should have.

Fast forward a couple of years: Same experience, credit industry comes forward with a bill, they refuse to include in there protections for consumers when it comes to credit, and that bill died as well.

Now we are in the third chapter of this long saga and we are considering this bankruptcy bill, which is S. 420. The question is whether or not we will report out a bill from conference that addresses some of the issues I have raised.

I think this bill has some serious defects and weaknesses. I am disappointed the Senate failed to take the opportunity to achieve meaningful reform on credit card disclosure and marketing practices.

There was a recent study by the Federal Reserve Bank in Boston. It concludes that the rise in personal bankruptcy in America roughly mirrors the increase in credit card loans outstanding—a direct relationship. So we see people getting deeper and deeper into credit card debt until a moment comes that pushes them over the edge. What is that moment? Perhaps it is when the debt becomes intolerably high, or the loss of a job, or a serious illness, or a divorce. These sorts of things push people over the edge and into bankruptcy court. But the reason they reach these terrible situations has a lot to do with credit card debt in America that continues to grow.

I was back in Illinois over the weekend and ran into a couple who started talking about some of the outrageous things happening to them. They told me a story about some of the things of which I was not aware. The fellow said:

Our family, like a lot of families, has several credit cards.

This is on a Friday night at the Navy Pier in Chicago. He pulled me over, and we weren't even talking about bankruptcy. He said:

I wanted to ask you about credit card companies. Did you know if you fail to make a timely payment on one of your credit cards that information is shared among the credit card companies? What happened is that I missed a payment on one of my furniture loans. As a result, my monthly interest rate on all my credit cards went from 12 to 20 percent. I called them and said I made timely payments on all these credit cards. They said, "But you missed your furniture loan over here."

He said:

Is that right? Is that fair?

I said:

The sad reality is, that is probably part of your contract.

I am a lawyer. When I flip over that monthly statement from the credit card companies—I have reached the point where I need pretty good glasses to read something, but I could not even make sense of the fine print on the back of my monthly credit card statement. I imagine most Americans, when they sign up for a credit card or see the monthly statement, don't say, Dear, we are not going to be able to go out to the movie because I need to take the next half-hour and read the back of my monthly credit card statement. People don't do that. But there are things going on with those credit cards that can severely disadvantage you.

We had an opportunity to do something about it in this bill and we did not do it. We did not do it. One of the things I pushed for I think is so basic, I cannot believe the credit card industry opposed it. Let me tell you what it was. On each monthly statement they say: Here is the minimum monthly payment. This is all we really want to receive from you.

I suggested as part of that monthly statement they say: This is the minimum monthly payment which you can make on your credit card balance. If you make that minimum monthly payment, here are the number of months you will have to pay to eliminate the balance completely. Here is how much you will have paid in principal and how much in interest. So people would be knowledgeable when they made a minimum monthly payment that in fact they were really signing up for paying off that balance over a period of years—and it is literally years—if they made the minimum monthly payment. Because what credit card companies do is keep charging interest so you just never catch up with yourself.

I suggested the credit card companies at least give us that information so consumers across America will be knowledgeable: OK, I have a \$2,000 balance. If the minimum monthly payment is \$25—or whatever it happens to be—how long is it going to take me to pay off that balance? Guess what. It is about 5 or 6 years or more. So, will I just pay \$25? If I could, I would pay more. Let's get rid of that balance because the interest is going to accumulate.

I went to the credit card industry and said: Include that information in the monthly statement. That cannot be something you would oppose. Do you know what they said? We just can't figure that out. We can't calculate that. We cannot produce that information for every borrower, it is just too complicated.

Baloney. With computers today and all the information we have available,

that would be an easy calculation. But the credit card industry doesn't want you to know it. They want you to dig that hole deeper and deeper because they make money in the process.

People who genuinely need credit, who may in a bad month only be able to make that minimum monthly payment—that is a situation that families can face. But shouldn't consumers be informed in America? When we talk about a bankruptcy reform bill, is it unreasonable to suggest that kind of credit card disclosure be part of that bill? The credit card industry said flat no, and it is not included.

Let me tell you another area that really rankles me. This is an amendment I offered on the bill, the bankruptcy bill here on the floor. It relates to a situation called predatory lenders. You read about them occasionally and see them on television. We see stories on some of the news reports. Here is what it is. You have people who prey on those who are elderly and not well informed and have them sign up for new debt on their homes, particularly for home improvements or vinyl siding or a new furnace or whatever it happens to be. They put provisions in those predatory loans that give them an opportunity to make extraordinarily high interest profits off those predatory loans, and they include other provisions called balloon payments and the like.

How many times have you read in the newspaper or watched on TV the story of a retired widow—and it has happened in the city of Chicago where I represent a lot of people—a retired widow who was safely in her little home for which she saved up for her life, and some smooth talker came by and had her sign up for what turned out to be a new mortgage on her home with really bad conditions and terms. So as time went on—usually the work turns out to be shoddy and the debt turns out to be intolerable, and it reaches a breaking point. When it reaches that breaking point, sometimes this person, in retirement, in their safe little family home, stands the risk of losing their home because of these predatory lending situations.

These are the most deceptive loans in America. They cost borrowers an estimated \$11 billion each year in lost equity, back-end penalties, and excess interest paid.

The American Association of Retired Persons, the largest group of seniors in America, did a survey. Eight out of ten Americans over the age of 65 own their home free of any mortgage. That is good. It shows people have planned ahead. When they reach retirement, they want to have that home and not have to worry about a monthly mortgage payment. We want seniors to be in that position.

However, the unscrupulous lenders out there know those seniors have an

asset and if they can get their hands on it, get their hooks into that senior, they set out to do that, and foreclosure is often the result when the senior fails to make these outrageous loan payments. The elderly person, the senior living alone or a person from a low-income neighborhood, can get a cold call from a telemarketer or a visit from somebody knocking on the door, telling them how they can get a new roof or windows: We can give you insulated windows with a little cheap loan; just sign up. It usually puts the unsuspecting victim in danger of losing their home. Almost before the victims know what hit them, they are whacked with outrageous fees, \$8,000 or more, slapped with skyrocketing interest rates and battered into a financial hole they never get out of.

This is what happened to Janie and Gilbert Coleman from Bellwood. The Colemans had purchased their home with a court settlement and had no mortgage payment at all. But this elderly couple with a 9th grade education had Social Security disability income and predators mortgage lenders moved in for the kill.

Although the Colemans were first able to meet the \$200 monthly payments on a \$12,000 loan, 8 years and 5 refinancings later they found themselves \$130,000 buried in debt.

They borrowed \$12,000. Over a period of 8 years, with all of the refinancing and all of the interest payments on this little home, the debt grew to \$130,000. That is what I am talking about.

Six loans were made to the Colemans. Four of these loans were made by a national lender, Associates, including two loans made just seven weeks apart.

Associates repeatedly sold the Colemans insurance that they did not want or need. And twice they were charged more for fees and insurance than they received.

Associates, a lending arm of Citigroup, is now the target of a multi-million dollar lawsuit filed by the Federal Trade Commission.

Associates earned over \$1 billion in premiums last year but paid only \$668 million in benefits.

This is a situation that is also going to illustrate what I am talking about.

People like 72-year-old Bessy Alexander from the South Side who believed that she was getting a fixed rate but really received a mortgage with an interest rate adjusting upward every 6 months—from an initial rate 10.75 percent to as high as 17.25 percent.

People like Nancy and Harry Swank of Roanoke, IL, who took a small loan from Associates to pay for a new stove and ended up with two loans, one at nearly 19 percent interest, totaling over \$76,000, well above the \$60,000 value of their home.

They started off buying a stove for their \$60,000 home. When it was all

over, they owed \$76,000 more than the value of their home.

People like 70-year-old Mrs. Genie McNab and other victims of predatory lending practices testified in 1998 before the Special Committee on Aging in a hearing chaired by Senator GRASSLEY.

If my colleagues have not done so already, I would encourage them to read the committee report from this hearing for a human face on this issue.

You ask yourself, what does this have to do with the bankruptcy bill that is before us? I will tell you what it does. I said in my amendment that if you have been guilty of violating fair credit practices, if you have taken advantage of people such as those I have described, if you are in a position as a company where you have used the law improperly and now have a foreclosure against someone who is going into bankruptcy court, we will not allow you to walk in and claim you have clean hands in bankruptcy court and take the home. Predatory lenders would have been put on notice that when it was all said and done after they battered these elderly people to the point where they can no longer make payments and force them into bankruptcy that our bankruptcy code will not protect these vultures.

My amendment lost on the floor of the Senate by one vote. You think to yourself, if you are going to have a balanced bill that says people shouldn't file for bankruptcy who have used the process, shouldn't the balance in the law also extend to creditors who walk into bankruptcy court and want the protection of our legal system to collect from these poor people who have been swindled out of their life savings? That seems fairly obvious to me. Doesn't it really suggest a balance in the law that we should have?

My amendment was defeated. Who defeated it? The financial institutions that don't want to be held accountable for their lending practices. That to me is one of the sad realities of the law that faces us.

We know who these predatory lenders are. When we had this testimony before our committees, we asked them: How do you pick out the homes of the people who you are going after? Well, they said, we look for primarily elderly people—primarily elderly widows, those who appear to be able to make a decision and sign the document but don't have a lot of advice from lawyers, or relatives, or anyone on whom they can rely.

They catch them in the most vulnerable situation. They take advantage of them. They take their money. They take their homes away, and they take it away in our court system. This bankruptcy law which we are now considering should be protecting those people instead of preying on them as it does.

There is a study I would like to share with you entitled "Unequal Burden: Income and Racial Disparities in Subprime Lending in America" by the U.S. Department of Housing and Urban Development. They found that: subprime loans are five times more likely in black neighborhoods than in white neighborhoods. In addition, homeowners in high-income black areas are twice as likely as homeowners in low-income white areas to have subprime loans.

Unsuspecting minority and low- to moderate-income consumers—often equity rich and cash poor—are targeted by predatory lenders that extend credit to high-risk borrowers ineligible for conventional loans. Of course, predatory lenders do not commit outright fraud. Many of these borrowers lack not only sufficient funds but also financial literacy. And they take advantage of them.

Let me tell you what one of these predatory lenders said when he was assured that he would be testifying behind the screen so that the television cameras couldn't see his face. He was so embarrassed and afraid that he didn't want to say this in public.

My perfect customer would be an uneducated woman who is living on a fixed income, hopefully from her deceased husband's pension and Social Security, who has her house paid off, is living off of credit cards, but having a difficult time keeping up with payments, and who must make a car payment in addition to her credit card payments.

There you have it. When you are out there looking for your prey as a predatory lender, that is what you are looking for. Your hope is that you push them so deeply into debt that they make all the payments they can until they reach the breaking point and then they go into bankruptcy court and you take the home.

Oh, what a happy day it must be that these predatory lending offices just picked up another home from another widow in bankruptcy court.

When I put the amendment on the floor, I basically wanted to spoil this party that these predatory lenders have at the expense of senior citizens across America. My amendment failed by one vote. This bill does not address that problem. To think we can call this bankruptcy reform and not offer that kind of balance, as far as I am concerned, is disgraceful.

We have seen the percentage of these predatory loans in precincts across the United States. It seems over and over again that these situations are where elderly people have become victims. Predatory lending is an epidemic.

Seven years ago, mortgages to people with below average credit was a \$35 billion business. Today, it is a \$140 billion business.

Who are we talking about? We are talking about somebody's parents, or

grandparents, who are caught unsuspecting by one of these predatory lenders who are ultimately going to run the risk of losing the home they saved for their entire lives. AARP—with 34 million members—has launched a campaign to fight this problem.

I know Senator SARBANES of Maryland, the Senate Banking Committee chairman, is going to have hearings this month on lenders that take advantage of vulnerable borrowers. I commend him for his leadership on this important issue.

Why wasn't this included in the bankruptcy bill? We have Senators standing up and saying: We need to protect these predator lenders. That is exactly what happened. I lost by one vote.

Let me talk to you for a moment about credit card disclosure and whether or not there is more information that we can ask for so we can have some balance when it comes to credit card predators across the United States.

There are 78 million creditworthy households in America. Remember that number—78 million. Each year there are 3.5 billion credit card solicitations. As I said, go home tonight and look through your mail. You are going to find them. If it is not there tonight, it will be there tomorrow night asking you to sign up for a new credit card. They are coming at you in every direction—not just through the mail, but in magazines, television; wherever you turn, they want us to sign up for more credit cards. Frankly, I think you understand what they are looking for.

One of the things they like to do is go after college students. There is a brand loyalty here. Major credit card companies think that when they set up a college student for a credit card, the college student will stick with their credit card for the rest of their lives. They do not ask hard questions as to whether the student will pay off the debt.

One of the things that I suggested about the minimum monthly payments was rejected by the credit card industry. I don't think it is a difficult thing to calculate. If you were to pay a 2-percent monthly minimum on a balance of about \$1,300, it would take you 93 months to pay it off. We are talking about over 7 years with your minimum monthly payment.

I am not for credit rationing. I believe credit cards have done quite a bit of good for a number of people. The credit card industry knows the fact that 10 or 20 years ago it might have been impossible for someone such as a waitress to get a credit card. Today they can in America. That is a good thing. There are times when credit cards are invaluable for individuals and their families. But we see that the credit card industry is not just offering credit to people who otherwise might

not have a chance to get it; we see them overwhelmingly offering credit way beyond the means of people to pay it off. I think the monthly statement should be a lot more informative.

Let me also go to one other issue before I give the floor to my colleague from Kansas. One of the issues which is part of this is the so-called homestead exemption. The homestead exemption is this: If you go into bankruptcy court and you say you have more debts than you can possibly pay off, you list all of your debts and all of your assets. And many States have said one of the things that you are able to retain is your homestead or your home. The value that you are able to keep depends on the State in which you live. So each State kind of defines what a home can be worth to be exempt from bankruptcy.

On its face it doesn't sound unreasonable that people would be allowed to keep their home even if they are bankrupt. You wouldn't want them to be homeless or out on the street. But there is such a gross disparity in the exemptions States offer for this homestead that we have seen some terrible and outrageous abuses.

There was a fellow who was the commissioner of baseball, Bowie Kuhn, who many years ago decided to file for bankruptcy. Before he filed, he moved to Florida. Why did he move to Florida? He bought himself a mansion worth hundreds of thousands of dollars. Then he filed for bankruptcy in Florida, and he was able to keep all of the money that he put in that mansion set aside and not opened to the creditors because Florida had a very generous homestead exemption.

The same thing is true in many other States. One of the famous actors, Burt Reynolds, did the same thing; he bought himself a big ranch worth over \$2 million and then filed for bankruptcy realizing that he had protected his assets. That is allowed; that is part of State law.

The PRESIDING OFFICER (Ms. LANDRIEU). The time of the Senator has expired.

Mr. DURBIN. I ask unanimous consent for an additional 3 minutes.

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

Mr. DURBIN. If we are going to have real bankruptcy reform, then shouldn't we have some consistency? The poor person I mentioned earlier who goes into court suffering from a predatory lender and is about to lose her home, for which she saved for a lifetime, is not going to have the same advantages that this actor and this commissioner of baseball had when it comes to a homestead exemption.

If it is real bankruptcy reform, it should address all levels of income in this country. It should be fair to every one. This bill is not.

O.J. Simpson filed for bankruptcy after being ordered by the court to pay

a \$33.5 million judgment. He got to keep his \$650,000 Los Angeles home. These poor people I talked about in Chicago who are about to lose their little home over predatory lenders don't have the advantage O.J. Simpson had in California. That isn't fair.

Actor Burt Reynolds' home was worth \$2.5 million. He got to keep that. Onetime corporate raider Paul A. Bilzerian kept his extravagant 11-bedroom, 36,000 square foot estate, the largest in the Tampa Bay area. It had a basketball court, movie theater, nine-car garage, elevator, and it was worth \$5 million. Because Florida law is very generous to wealthy people filing for bankruptcy, he was able to keep his home. The person I talked about in the city of Chicago didn't have that benefit.

Elmer Hill, Tennessee coal broker, 3 days before being ordered to pay \$15 million to a company he defrauded, shielded his assets by purchasing a \$650,000 waterfront home in Florida and paying \$75,000 to furnish it. Then he declared bankruptcy. The Florida Supreme Court recently ruled he was permitted to keep his home. The court said that "a debtor with specific intent to hinder, delay or defraud creditors" is presently able to shield his or her assets in their home.

Senator KOHL of Wisconsin offered an amendment to reform this. I supported it. The amendment passed. But, the interests that support wealthy people here want this provision stripped in conference.

When we consider bankruptcy reform, should we not have basic fairness? Shouldn't all families across America, regardless of their wealth and income, be treated fairly? Sadly, this bill does not.

I will not be supporting this bankruptcy bill in its current form.

I ask unanimous consent that Senator TORRICELLI be allocated 10 minutes of the time controlled by the proponents of the substitute amendment.

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

Pursuant to the previous order, the Senator from Kansas is recognized.

Mr. BROWBACK. Mr. President, I appreciate the comments of my colleague from Illinois who I have some agreement with on the bankruptcy bill, although not on the homestead provision. I want to articulate why I have a different viewpoint.

Overall, I believe the House version of this legislation, the bankruptcy legislation, is a good piece of legislation with which we can work. I have worked hard on it. We have worked hard for a number of years on getting bankruptcy reform. The last conference report on bankruptcy passed with over 70 votes, which is a substantial vote and the agreement of a number of people.

One of the key provisions that was worked out on this overall bankruptcy

legislation was the homestead provision. That is key to me. It is key to my State because of the nature of the homestead provision throughout bankruptcy and the bankruptcy code's history, how we have left that to the States. In previous bankruptcy bills, we have constantly left the homestead provision to the States, which is where it should be. The States should determine this.

In seven States in this country, including my own of Kansas, there is a homestead provision that is in our State's constitution. The founders of my State saw as so important the protection of the homestead that they provided in the constitution of our State a protection for the homestead of 160 acres, 160 contiguous acres to be in a farm, or one acre in town of contiguous acreage in protecting that home. They said this is something that is central to us. I will talk about why that is central.

It is central because farming, agriculture has been so much a part of our State's past. A number of farmers would borrow to protect, not against the homestead; they would borrow against other areas for the farm and leave the homestead out of it because if they would lose the farm, they could at least protect their home and 160 contiguous acres.

I used to be a lawyer in private practice prior to getting involved in public office. As such, I would examine a number of abstracts. Abstracts are titles to the land. They are histories of the land—who used to own it, who had a mortgage against the land, who had a lien against the property. You would examine that to see if there was clear title to the land or not.

You could track a piece of property and see the farm cycles in it. If the years were going well, there wouldn't be a mortgage against the property. If it was going poorly, there would be a mortgage against the property. But almost always they would leave clear and free, if they possibly could, that homestead because just as sure as you would get one bad year, you might get 2, and then you might get 3, and then you would lose the farm.

The history would follow the farm cycle. Just as farm prices and farm production would go down, mortgages would mount up. And then you would have a loss of the farm.

They would set aside and protect this homestead. They wouldn't put a mortgage against it, if at all possible, because our State's constitution said they could keep that homestead to start farming again. If they got on the bottom of the trough, lost the rest of the farm, lost livestock, they could still have that home and 160 acres to be able to start farming again and build back up in a cycle.

We built this into our State's constitution. Seven other States did. It

was an important part of maintaining that farming tradition and of keeping people on the farm. That is what it did.

In the last cycle we went through, which was the early 1980s, I was still practicing law at that time. We continued to have at that time the homestead provision for family farmers, where you would leave within that a home and 160 acres. There are a number of people in Kansas who are still farming today because they didn't mortgage the homestead. They lost much of the rest of the farm in the downturn of the farm cycle, but they were able to rebuild around that home and 160 acres and start and move forward again.

It was used then. It will be used again in the next farm cycle, if we don't take that right away in the Bankruptcy Reform Act of 2001.

What has taken place is that this has been a long, hard-fought battle over the past several years—the bankruptcy reform that we have put forward. We worked out a compromise in the House that protects the sanctity of those State laws on homestead provisions and allows accumulation of a certain amount of property. It doesn't allow fraud. If you are trying to move money into the homestead within 5 years of bankruptcy, that can get pulled back out in bankruptcy proceedings. It doesn't allow you to fraudulently say: I am going to cash out this asset and put that into my homestead as a way of building up equity on the homestead. That can all be set aside by the court. This was a carefully compromised package that came from the House bill.

The problem is in the Senate bill where it takes away the States rights to establish a homestead. There was an exemption provision carved out for the family farm by Senator KOHL, for which I am grateful; but it wasn't within the home in town. So now you have the Federal Government, for the first time in 120 years, telling the States what is the homestead. They have not done that for 120 years. We should not do that now. This is the wrong time for us to start; it is the wrong thing for us to do to take that away.

As I understand it, we are going to vote on inserting the Senate package, which takes away this homestead right from the States. That is in the Senate package on which we will soon be voting. I am opposed to doing that, and I will vote against that bill if it continues to maintain that type of homestead provision which takes away the homestead rights from the States and puts it into Federal bankruptcy law. That is against our State's constitution and against the constitution in seven other States in this country. We should not be doing that. It is a bad precedent to start.

I have no doubt that if we start it in this bankruptcy reform, in the next bankruptcy reform we do we will go

after the family farm homestead provision because there will be some allegation of, OK, there was somebody who shielded assets here and they were able to protect too much, going through a family farm type of setting, and then we will set it aside. There will undoubtedly be an example or two, but we find in most of the lawsuits—the vast majority—that there are not abuses taking place to the homestead provisions. It would be wrong for us to say we have a couple of examples, and because of the abuse in a couple of cases we want to take this right completely away from the States for thousands of people, hundreds of thousands of people who have depended upon this for the past 120, 130 years.

I think particularly if we start down this road of Federalizing the homestead provision, while we may not hit the family farmers now, we will the next time around, and that would be a wrong way for us to go.

I want to make it clear on this point again that if there is fraud involved, if somebody is taking assets from another area and putting them in the homestead to hide from a creditor, that is covered by the law. You cannot do that today. You cannot do that under the provision that is in the House bill, and we should not allow people to do that. So we are not talking about fraudulent transactions. Many examples cited by my colleagues on the homestead provision actually involve fraudulent transactions. They are against the law and they should be. We should not allow people to fraudulently hide assets. But we should not, as well, take away this homestead provision from States on homes and family farms because of allegations of examples that don't even apply in the situation. This is not fraud—what I am talking about. This is about a basic home, a home on 160 acres in the country, if you are a family farmer.

The Kohl amendment in the Senate version is one that I vigorously oppose because it jeopardizes the compromise that was worked out last year in the bankruptcy bill, and I believe it jeopardizes the fate of the entire bill, as well, because of what it does to the homestead provision. That is what this amendment is about.

I urge my colleagues to vote against inserting the text of the Senate bill into H.R. 333 and to support, instead, the House version, which contains the compromise language with which I am comfortable, and with which I believe Senator HUTCHISON of Texas is comfortable as well. It maintains the homestead provision and authority in the States, with some limitation on it, which is a concession on our part.

The Senate bankruptcy bill, if it is inserted in the House version with the Kohl amendment included, radically alters the homestead provision from what was crafted last year. It is in this

carefully balanced legislation we have before us. If the Senate language is put in with the Kohl amendment that takes away the homestead rights from the States, I will be vigorously opposing this legislation, as will a number of other colleagues who have similar homestead problems, given the constitutions within their States. I urge my colleagues to vote against doing that.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Under the previous order, the Senator from New Jersey is recognized for up to 10 minutes.

Mr. TORRICELLI. I thank the Chair. Madam President, for more than 4 years, the Senate has been considering various proposals to address the bankruptcy system in the United States. Everyone on all sides of this debate seems to have agreed the bankruptcy system is in need of serious repair.

There have, however, been many questions about how to address the problem. In both the 105th and 106th Congresses, efforts to pass bankruptcy reform came very close. In the final days of each session, we could not make the mark.

At the start of the 106th Congress when I assumed the role of the ranking Democratic member on the Judiciary subcommittee of jurisdiction, I felt some optimism that we could succeed. In the previous Congress, Senator DURBIN had come very close, and we began with an outline of his legislation.

During the 106th Congress, literally hundreds of hours were spent with Senators GRASSLEY, BIDEN, HATCH, SESSIONS, and LEAHY over many of these very difficult issues.

The bill before the Senate today is a culmination of all of those hours, months, indeed, years of work. It represents the suggestions of many Members of this Senate now included in provisions of this bill.

It is a fair bill. It genuinely represents the sentiments of the Senate and both political parties. It improves the bankruptcy system, eliminating many of its abuses without doing injury to vulnerable Americans and continuing the protection that Americans need to reorganize their lives. It may be tougher than current law, but it is also fair.

The best indication, I believe, of our success in this effort is the bipartisan vote in the Senate itself earlier this year when the bill passed by an 83-15 vote.

For the Senate to speak in such a loud, consistent, and bipartisan voice

is probably a reflection of the understanding of the depth of the problem. In 1998, during the largest economic expansion in American history, 1.4 million Americans sought bankruptcy protection. That is a staggering 350-percent increase since 1980.

In 1999, filings were reduced by 100,000 but still remained at the 1.3 million filing level. It is estimated that 70 percent of these filings were made in chapter 7, allowing a debtor to obtain relief from most of their unsecured debts. Conversely, only 30 percent of filings were in chapter 13 which requires a repayment plan.

The Department of Justice has estimated that 182,000 people per year, people currently filing under chapter 7 to avoid their debts, properly belong in chapter 13 where they will repay part of their debts. The difference is not insignificant. If those 182,000 people were moved into chapter 13 and were paying those debts which were affordable, \$4 billion would be returned to creditors.

Critics of the bill argue that \$4 billion would only enrich large financial institutions, transferring money from people who live marginal economic lives to wealthy institutions. That claim ignores the fact that much of the debt burden that is avoided by chapter 7 filings also goes to local contractors—the mechanic on the corner, the small retailer, the family business which provides services or goods, only to face someone entering into bankruptcy and avoiding paying their debts. This creates a situation where one debtor passes a debt on to a family business and causes that business to fail and then another family business. It is not fair, and it is not right.

Critics have also argued that bankruptcy reform will deny poor people the protection of the bankruptcy system, recognizing the bankruptcy system has always been an important part of American life, giving people a second chance, ensuring that because someone has made a mistake or, more likely, through a problem of health in the family or divorce, illness, they are not denied a chance of fulfilling a prosperous life.

This claim simply is not true. No American is being denied access to bankruptcy. Indeed, the bill contains several provisions to ensure that no one genuinely in need of debt cancellation is prevented from receiving a fresh start under chapter 7. It is done in several ways.

First, the bill gives the judge discretion to consider the debtor's special circumstances under which they are unable to meet a payment plan, an escape clause where a judge can always ensure that a person with no means is given chapter 7 protection.

Second, it contains a safe harbor to ensure that all debtors earning less than the State median income will have access to chapter 7 without quali-

fication. If one is under the median income, one is in chapter 7, period.

Third, the bill adds a floor to the means test to guarantee that debtors unable to pay more than \$6,000 of their outstanding debt will not be moved into chapter 13: Again, protection for people of modest means.

All this gives people of lower income a chance to sweep away their debts and to start again an American life. It has always been our way.

Finally, probably the most unfair criticism and the one to which I am most sensitive is the issue of whether this adds a new burden to women and children. The bill contains language that Senator HATCH and I offered in an amendment to protect exactly this element of our society: single parents and children in need of protection.

Under current law, when it comes to prioritizing which debts must be paid off first, child support is seventh in bankruptcy court. It ranks after rent, storage garages, accountant fees, tax claims, or other claims by government, and that is wrong.

Not only does this new bill not make it worse, we make it better. Under the bill, child support is moved to where it belongs: First, ahead of government, other businesses, or financial institutions. The obligations of a father or mother to their child will never be put behind another debt.

Finally, this compromise deals with one other area of the law that is equally important. We were not going to reform bankruptcy laws without doing something about the overreaching efforts by the credit card industry itself.

The credit card industry yearly has more than 3.5 billion solicitations of Americans, encouraging them to incur debt. That is 41 mailings for every American household, 14 for every man, woman, and child in the Nation. Not surprisingly, with this level of solicitation, Americans with incomes below the poverty line have doubled their credit usage in the last decade. The result is not surprising. This doubling of credit usage has involved 27 percent of families earning less than \$10,000 a year, having consumer debt that is 40 percent or more of their income.

If we are going to do something about the abuse of bankruptcy laws, it is only right and fair we do something about the credit industry encouraging Americans to incur debts they cannot afford and in which they should not have become involved.

We deal with these abuses of the credit industry in several ways. First, we require that lenders prominently disclose the following aspects of their debt solicitations: The effects of making only the minimum payment every month; second, when late fees will be imposed; third, the date on which introductory or teaser rates will expire, as well as what the permanent rate will be after that time.

This is balanced legislation protecting the most vulnerable Americans who have marginal economic lives; ensuring that single parents and children are protected; ensuring that the credit industry itself has new obligations but also ensuring that bankruptcy laws are not misused and do not become an opportunity for Americans to escape the financial obligations they have willfully encountered and passing that burden on to other small businesses or institutions that cannot afford them.

Madam President, \$4 billion of unpaid bills, unfairly passed on to others, is more than American businesses, industries, family firms, and farms should have to incur.

At long last we have reached reform of our bankruptcy laws. It is a good moment for the Senate and for the Judiciary Committee for these years of struggle with this legislation. I commend again Senator LEAHY, Senator HATCH, and all who joined in the process through the years.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Madam President, I am pleased to rise today to support the motion to invoke cloture on the substitute amendment to H.R. 333. The substitute language is the text of S. 420, the Bankruptcy Reform Act, which passed this Chamber with a bipartisan vote of 83 to 15 on March 15. As you may recall, the conference report to last year's bill, H.R. 833, passed the Senate by a similarly wide margin just last December, but was pocket-vetoed by President Clinton at the end of the legislative session.

Today, we are another step closer to getting this bill to conference and heading down the home stretch of this legislative marathon. It is time to wrap up this debate and appoint conferees who will present a good bill to the President for his signature so American consumers can reap the benefits.

As my colleagues well know, we have cooperated and compromised at every step along the way in order to produce a fair piece of legislation that provides new consumer protections, helps children in need of child support, and makes other necessary reforms to a system that is open to abuse.

Contrary to the views of the bill's opponents, this legislation does not make it more difficult for people to file for bankruptcy, but it does eliminate some of the opportunities for abuse that exist under the current system. Right now, certain debtors with the dem-

onstrated ability to pay continue to abuse the system at the expense of everyone else. Current law perpetuates a system in which people with high incomes can run up massive debts, and then use bankruptcy to get out of honoring them. In the end, all of us pay the price for those who abuse the system in the form of higher interest rates and rising consumer prices.

I am optimistic that this much needed bankruptcy reform legislation will be signed into law this year once the procedural roadblocks put down by the narrow opposition have been removed. It is beyond time to appoint conferees and to enact meaningful bankruptcy reform. As I have said many times here on the floor, and just as lately as last week, the American people have waited long enough.

I also oppose amendments that may be offered at this stage after we invoke cloture.

I take very seriously the role of the Senate as a deliberative body, but with respect to this reform bill, I am beginning to feel like the passenger on the *Titanic* who said, "I asked for ice, but this is ridiculous." The offering of any additional amendments on this bill at this stage will set a dangerous precedent for reopening bills that have already been fully considered here on the Senate floor. I urge any and all of the 83 Senators who voted for this bill in March to vote to defeat these amendments to send a clear message that "final passage" means just that. Resolving remaining issues is the job of a conference committee. It is simply fortunate, and, in my opinion bad faith, to reopen issues after holding a hearing and mark-up in committee followed by a prolonged debate on the floor, with almost one hundred amendments considered at that time.

No one can say that the Senate has not already adequately considered bankruptcy reform. The Senate has literally been engaged in the process of deliberating on this issue for years, with numerous hearings, markups, and votes. Back in 1997, a comprehensive bankruptcy reform bill was developed by Senators GRASSLEY and DURBIN which we marked up and reported out of committee in May of 1998. In September of that year, the Senate passed bankruptcy reform by a vote of 97 to 1. This overwhelming Senate vote in favor of bankruptcy reform was followed by the appointment of conferees, negotiations with the House, and in October of 1998, an overwhelming House vote in favor of the conference report.

Although the motion to proceed to consideration of the conference report was agreed to in the Senate by a strong vote of 94 to 2, the Senate ran out of time for a vote on final passage before the end of the Congress.

In February of 1999, Representative GEORGE GEKAS introduced bankruptcy reform again, which passed out of the

House in May of 1999 by another overwhelming vote of 313 to 108. Then, the Senate Judiciary Committee once again marked up Senator GRASSLEY's bill and in May of 1999, we reported it out of committee.

Then, in February of last year, the reform legislation passed the Senate by another impressive margin of 83 to 14. The Senate requested a conference, but the objection of a single member from the other side of the aisle blocked the appointment of conferees. As a result, we had to turn to an informal conference process with the House. With a great deal of effort by members on both sides of the aisle, we reached a compromise agreement on over 400 pages of legislation, and on all but one issue.

In October of 2000, the House passed the bankruptcy reform conference report, and in December, the Senate passed it by yet another vote of 70 to 28. And, as my colleagues know, later that month, the President pocket-vetoed the legislation.

The issue of bankruptcy reform is not a new one. We have studied it, held hearings on it, compromised on it, and come to resolution on it with veto-proof margins, in both houses time and again. An elaborate record that sets out the issues, documents the debate and makes the compelling case for reform is available to anyone who cares to give it their attention. At some point, the process of deliberation needs to come to a close, and the will of the Congress needs to be exercised.

Only those who want to use delay to kill bankruptcy reform altogether could possibly argue for more process. Now is our opportunity to enact into law the legislation that the Congress supports and that the American people want. Let's get on with the Nation's business.

I would hope that we defeat any obstructionist amendments at this stage, or we may never see the end to any legislation already passed by this body ever again.

I yield the floor:

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak on this motion for up to 15 minutes, and at the conclusion of my remarks that the vote on the motion commence.

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

Mr. FEINGOLD. Mr. President, I commend the Senator from Minnesota for his efforts to educate our colleagues and the American people about the unfairness of this bankruptcy bill. It has been a lonely struggle for him, but the Senator from Minnesota has never avoided a struggle because it is lonely. He has succeeded in framing the issues for the conference quite well. Are we passing this reform for the credit card companies or for consumers? Who is the Senate working on behalf of here?

Are we going to pass a bill that passes muster with bankruptcy law experts in the law schools and the courts or with the big banks?

I spoke back when we considered this bill in March about the problems with this legislation and why I believe it should not be passed. Even with the addition of a number of important amendments during the Senate debate—and I hope that the bill that emerges from conference is more like that bill than the House bill—I still believe that the bill will do terrible damage to the bankruptcy system in this country, and even more importantly, to many hard-working American families who will bear the brunt of the unfair so-called “reforms” that are included in this bill. It is unfortunate to have to say it, but this is a harsh and unfair measure pushed by the most powerful and wealthy lobbying forces in this country, and it will harm the most vulnerable of our citizens. I voted against the bill when it came up for final passage in March, and I voted against proceeding to it last week. I continue to support bankruptcy reform, but not this version.

One of the major problems with the bill that came to the Senate floor was fixed by an amendment offered by the senior Senator from my State, Mr. KOHL. Senator KOHL has been crusading for years against the millionaire’s loophole in the bankruptcy law—abuse of the unlimited homestead exemption. By a lopsided vote of 60-39, the Senate voted not to table his amendment to set a national ceiling on the use of that exemption. It is clear to everyone that the fate of Senator KOHL’s homestead exemption will be the most fiercely contested issue in a House-Senate conference.

Let me put it as simply and clearly as I can: A bankruptcy reform bill that does not contain limits on abuse of the homestead exemption is a fraud on the American people. We cannot claim to be acting in an even handed fashion if we leave this major loophole untouched, while at the same time imposing harsh new limitations on average hard working people forced by circumstances to seek the protection of the bankruptcy laws.

There are a number of other problems with the bill that I hope the conference committee will try to work out. I will take my remaining time this morning to highlight one. It has to do with the new definition of “household goods” in section 313 of the substitute amendment.

As written, this bill very quietly undermines an extremely important protection that current bankruptcy law offers to debtors. Section 313 is a gift to finance companies who have what I consider to be a questionable practice of taking liens on the personal property of the people to whom they lend money.

To understand how unfair the bill is here, my colleagues must be aware that the practice of taking a non-purchase money security interest in certain household goods has been illegal for many years. Under 16 C.F.R. § 444.2, a regulation first promulgated by the Federal Trade Commission during the Reagan Administration, it is an unfair credit practice under section 5 of the Federal Trade Commission Act for a lender to “take or receive from a consumer an obligation that constitutes or contains a non-possessory security interest in household goods other than a purchase money security interest.”

Let me take a step back and remind my colleagues of the difference between a purchase money security interest and a non-purchase money security interest. A purchase money security interest is a lien that is taken on the property that is being purchased with the proceeds of a loan. For example, an auto manufacturer or a bank takes a purchase money security interest in your car when you get a loan to pay for it. That security means the lender can repossess the car to satisfy the loan if you don’t make your payments. Major department stores might take a purchase money security interest in a home entertainment center or a computer or a major appliance that you buy on credit. It makes perfect sense for these lenders to be secured creditors and to protect their interest in getting their loans repaid. No one has a problem with that.

But when a finance company takes an interest in property already in the home to secure a loan, property that is already purchased and paid for, that is a non-purchase money security interest. And as I said, the FTC determined long ago that such an interest on household goods is illegal. The FTC’s definition of household goods, however, is limited. On this chart, you can see the definition of household goods in the FTC regulation—clothing, furniture, appliances, one radio and one television, linens, crockery, kitchenware, and personal effects, including wedding rings.

So this definition of household goods is relatively narrow. It includes only a single TV, for example, and it doesn’t cover things such as CD players that hadn’t even been invented in 1984, or personal computers that were not nearly as common in family homes as they are today. Nonetheless, the FTC rule prohibits finance companies from taking non-purchase money liens on items covered by this definition.

But finance companies that like having these liens as a bargaining chip with their borrowers have hardly been deterred. They want to turn what is essentially an unsecured loan into a secured loan. So they take liens in everything in the house they can get their hands on that is not on the FTC’s list of household goods.

This chart shows a typical form that the finance companies use to get borrowers to list their personal property when they apply for a loan. They take a lien on everything that a borrower identifies—things like garden tools, jewelry, rugs, cameras, exercise equipment. Make no mistake, these companies have no intention of repossessing these items—most of them are probably worthless—they just use them as a threat to try to get their loans repaid. This chart shows a typical loan application with a list of household goods that these lenders try to take an interest in. They try to cover it all: bicycles, tennis rackets, hedge trimmers, leaf blowers, mirrors, model airplanes, sleeping bags, the list goes on and on and on.

Under section 522(f) of the Bankruptcy Code, a debtor can apply to the bankruptcy court to avoid these non-purchase money liens in household goods. And the courts have generally interpreted household goods broadly to include all items kept in or around the home to facilitate the day-to-day living of the debtor. The courts have specifically rejected the narrow list of household goods contained in the FTC’s regulation as too narrow.

Remember, in bankruptcy, liens can’t be avoided on extremely expensive items. The power of lien avoidance under section 522(f) only applies to property that falls under an exemption from the bankruptcy estate, and there are strict limits on the value of property that is exempt from liquidation in bankruptcy under State and Federal law. But the power of lien avoidance serves the purpose of treating creditors equally and fairly, particularly in Chapter 13, and it protects debtors from being pressured into reaffirming debts that they would otherwise be able to discharge in bankruptcy because they fear they will lose their family heirlooms or their child’s model airplanes.

Section 313 of the bill is a new and very restrictive definition of household goods for purposes of the lien avoidance power. It essentially codifies the FTC’s list of household goods and makes it the exclusive list of household goods on which liens can be avoided in bankruptcy.

This chart shows how section 313 compares to the FTC’s definition. The bill would turn the law on its head. In effect, it says that virtually the only liens that can be avoided are those that the FTC’s regulation already prohibits. As you can see here, liens can be avoided on clothing, furniture, appliances, one radio and one television, linens, crockery, kitchenware, and personal effects, including wedding rings—all items that are on the FTC’s list already.

Thus, under this definition, section 522(f) lien avoidance, which is intended to protect the exemptions for personal

property that states and federal law provide, is almost completely gutted.

All of the things I mentioned before that finance companies commonly take liens in are not included in the definition—garden tools, jewelry, rugs, cameras, exercise equipment, bicycles, tennis rackets, hedge trimmers, leaf blowers, mirrors, model airplanes, and sleeping bags. Finance companies can take liens in these items and enforce them in a bankruptcy case.

The real problem here is that no list can be exhaustive. And there is really no reason to have an exhaustive list anyway. The courts are fully capable of determining in a bankruptcy case what kinds of things are standard household items. The list in the bill is far too narrow, and there is absolutely no evidence that there are abuses taking place that need to be addressed.

The reason that this provision is in the bill is simple—the finance companies that support the bill want more power to take these borderline unethical liens. They want more power to coerce people into reaffirming debts because they don't want their home stripped bare by a company that holds an interest in everything in it. This provision is part of the "deal" between all the creditors that support this bill. All of them are getting their special protections in this bill, and consumers are left with nothing.

Mr. President, I was prepared to offer an amendment to strike section 313 back in March, but time ran out before I could offer it. I filed it so that it could be offered once cloture is invoked. I will not offer it today, but I believe we should remove this offensive provision in conference. That would move this bill just a little closer to one that actually treats American families fairly.

I thank my colleague from Minnesota for all he has done to fight for American families on this issue. I yield back the balance of my time.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The senior assistant bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the substitute amendment No. 974, the text of S. 420, as passed by the Senate, for H.R. 333, the bankruptcy reform bill:

John Breaux, Harry Reid, Byron Dorgan, E. Benjamin Nelson of Nebraska, Kent Conrad, Thomas Carper, Chuck Grassley, Daniel Inouye, Joe Biden, Robert Torricelli, Joseph Lieberman, Blanche Lincoln, Max Baucus, Zell Miller, James Jeffords, Tim Johnson, and Patrick Leahy.

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

Is it the sense of the Senate that debate on amendment No. 974 to H.R. 333, an act to amend title 11, United States Code, and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

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

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

I further announce that if present and voting, the Senator from New Hampshire (Mr. SMITH) would vote "yea."

The yeas and nays resulted—yeas 88, nays 10, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—88

Akaka	Ensign	Mikulski
Allard	Enzi	Miller
Allen	Feinstein	Murkowski
Baucus	Frist	Murray
Bayh	Graham	Nelson (FL)
Bennett	Gramm	Nelson (NE)
Biden	Grassley	Nickles
Bingaman	Gregg	Reed
Bond	Hagel	Reid
Breaux	Hatch	Roberts
Bunning	Helms	Rockefeller
Burns	Hollings	Santorum
Byrd	Hutchinson	Sarbanes
Campbell	Inhofe	Schumer
Cantwell	Inouye	Sessions
Carahan	Jeffords	Shelby
Carper	Johnson	Smith (OR)
Chafee	Kennedy	Snowe
Cleland	Kerry	Specter
Clinton	Kohl	Stabenow
Cochran	Kyl	Stevens
Collins	Landrieu	Thomas
Conrad	Leahy	Thompson
Craig	Levin	Thurmond
Crapo	Lieberman	Torricelli
Daschle	Lincoln	Voivovich
DeWine	Lott	Warner
Domenici	Lugar	Wyden
Dorgan	McCain	
Edwards	McConnell	

NAYS—10

Boxer	Dodd	Hutchison
Brownback	Durbin	Wellstone
Corzine	Feingold	
Dayton	Harkin	

ANSWERED "PRESENT"—1

Fitzgerald

NOT VOTING — 1

Smith (NH)

The PRESIDING OFFICER. On this question, the yeas are 88, the nays are 10, with 1 Senator responding "present." Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. Mr. President, I know the hour for recess is here, but at 2:15 I will renew a unanimous consent agreement that Senator DOMENICI and I have offered on at least two or three separate occasions on previous days to have a cutoff time for the filing of amendments to the energy and water appro-

priations bill. I hope both the Democrats and Republicans during their noon conferences take up this issue. It is an important bill. Until there is a filing of amendments, staff cannot work on these to see if we can accept some of them. It would be helpful in moving this bill and having a fair, responsible piece of legislation so we wouldn't have to work on these at the last minute.

I will renew my request at 2:15.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask what is the pending matter before the Senate?

The PRESIDING OFFICER. Under the previous order, the Senate is to stand in recess until 2:15.

Mr. DODD. Mr. President, I ask unanimous consent I may be allowed to address the Senate as in morning business for the next 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized.

ELECTIONS

Mr. DODD. Mr. President, I am going to come to the floor later with lengthier remarks, but there are two subject matters I want to bring to the attention of my colleagues that I am sure they have taken note of over the last several days. The first is the continuing reports about last year's elections in the United States. Obviously, there was particular focus on the State of Florida. But, Mr. President, as you know because of your deep interest in the subject as well, we believe this was not exclusively a Florida issue. Nor was it merely an issue involving the national election last year. Mr. President, we have a serious problem, based on a number of studies that have been conducted by Members of the other body as well as the Civil Rights Commission and the Massachusetts Institute of Technology, whereby as many as 6 million people did not have their votes counted last year. That is in addition, I suppose, to the 3 million people we now know who actually tried to vote but were told they were not allowed to vote despite the fact they actually had the right.

That is now 9 million people. I know of 10 million people who are blind in this country who did not vote last year. Only one State in the United States actually allows people who are blind to go in and vote on their own. In any other jurisdiction, if you are blind you must be accompanied by someone else. You never get to vote in private, in spite of the fact there is hardly an elevator in America built in the last 5 years where there is not Braille to assist you. You can operate an elevator alone but you cannot cast a ballot alone in the United States.

So there is a growing sense of scandal, in my view, not because someone