

when the Senator from Iowa stands before us and supports plans, as I do, for a prescription drug benefit under Medicare, that will be more Federal spending. He and I will support that. We believe the seniors and disabled across America are entitled to it.

We have to make sure we reserve enough money, in terms of what our plans are for tax cuts and deficits and debt reduction, so we can still make investments to make sure there is a prescription drug benefit under Medicare.

Let me add another point. The Senator from Iowa understands as well as anyone that we are going to face a balloon payment in Social Security and Medicare when the baby boomers all show up. If we do not make plans right now to protect Medicare and Social Security, we will find ourselves without the resources to take care of these people. We made a promise that throughout their working lives, if they paid into Social Security and Medicare, it would be there when they needed it. We are not providing for that with President Bush's tax cut. In fact, in order to fund his tax cut, he has to reach into the Medicare trust fund and take out money. If you take the money out of this trust fund, it will not be there when the baby boomers show up. The balloon payment will be there.

We will have to pay it to keep our contract with the American people, and the President's tax cut and his strategy will have eaten up the Medicare trust fund.

Senator CONRAD of North Dakota is going to offer an amendment to protect the Medicare trust fund, and Members on both sides of the aisle will have a chance to stand up and say: We are not going to raid the Medicare trust fund to pay for President Bush's tax cut. I am anxious to see how that vote comes out.

If Members of Congress believe as strongly as I do about protecting Medicare and Social Security, then they should vote in favor of Senator CONRAD's amendment, which will be offered this afternoon.

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

Mr. DURBIN. I will be happy to yield to the Senator.

Mr. REID. One of the points the Senator from Illinois made during his initial statement was that he believes it is time we had a bipartisan agreement on the budget and on taxes generally.

I heard the Senator say—and I am commenting on the comment my friend from Iowa, the chairman of the very important Finance Committee, made—we are talking negatively. I say to my friend from Iowa, the Senator from Nevada and the Senator from Illinois are talking about the economy. We are talking about the need to do something about it.

If we, with a 50-50 Senate, butt heads here, we are going to get nothing done.

Will the Senator elaborate a little bit on one of his initial statements that we need to work on a bipartisan agreement to come up with something that is good for the American people?

Mr. DURBIN. The Senator understands President Bush was elected promising he was going to change the tone in Washington—more civil and more bipartisan. I actually thought he got off to a good start. He invited Democratic Congressmen and Senators to the White House. They had a good time. They watched movies, he gave them all nicknames, and it looked as if it was going to be a great change in atmosphere.

In the last week or two, things have not improved. They have gone the other way: The decision in the House of Representatives by the Republican leadership on the tax cut vote they would not even allow amendments from Democrats or Republicans on the floor. They allowed one substitute vote. Their hearings in the Ways and Means Committee did not allow any bipartisan exchange.

Frankly, I do not think that is in keeping with the President's promise of more bipartisanship. It is going to occur over here. There will be a real debate on taxes in the Senate. Senator GRASSLEY, as chairman of the Finance Committee, is going to provide an opportunity for amendments and discussion in his committee. We will have a chance to offer amendments on the floor, and a 50-50 Senate finally will debate this bill.

The last week has not been promising. The decision of the President to go to the home State of the minority leader, TOM DASCHLE, was an interesting choice. I do not think it was the best political decision for a President preaching bipartisanship, but it was his decision. I hope we can return to his promise of bipartisanship.

I guess the Senator from Nevada heard the comment of the Senator from Pennsylvania a few minutes ago about the decision in 1993 by the Clinton administration to put together a package to do something about our deficits. That package, which passed in the House and the Senate, did not have a single Republican in support of it. Many of the Republicans who are saying President Bush's tax cut is the best medicine for America also voted against President Clinton's plan in 1993.

That plan turned it around. We got out of the deficit mentality and deficit experience and started creating surpluses.

The Senator from Pennsylvania talked earlier about the unfair tax burden. I will read from the same New Yorker article I quoted earlier about that tax plan in 1993:

From 1992, the year before a supposedly onerous new marginal tax rate kicked in, through 1998, the most recent figure for

which the IRS has information available, the average after-tax income of the richest 1 percent in America rose from \$400,000 to just under \$600,000—

That is in a 6-year period of time.

and from 12.2 percent of the national net income to 15.7 percent.

Our friends on the Republican side do not want to acknowledge that we not only put a plan in place that ended the deficits in this country but also created income, wealth, and prosperity, the likes of which we have not seen in modern history. Now comes President Bush saying I want to return to the concept that I tried in Texas, where I started with a surplus, put in a tax cut, and ended up with a deficit.

Excuse me if many Members of the Senate are skeptical of that approach.

RECESS

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

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m.; and reassembled when called to order by the Presiding Officer (Mr. INHOFE).

BANKRUPTCY REFORM ACT OF 2001—Continued

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes for closing remarks on amendment No. 29, as modified, and amendment No. 32 to be equally divided in the usual form.

The Senator from North Dakota is recognized.

AMENDMENT NO. 29, AS MODIFIED

Mr. CONRAD. Mr. President, my amendment is designed to protect the Social Security trust fund and the Medicare trust fund. It has been called the Medicare-Social Security lockbox. That is a good description. It is designed to try to prevent these trust funds from being used for other purposes, from being used as we saw in the past for spending on other programs.

A quick description of what my amendment provides is the following:

First, it protects Social Security surpluses in each and every year;

Second, it takes the Medicare Part A trust fund off budget just as we have taken the Social Security trust fund off budget, again to try to protect it from being raided and used for other purposes;

Third, it gives Medicare the same protections as Social Security;

Fourth, it provides strong enforcement legislation and strong enforcement provisions to make certain that protections hold.

The alternative—the legislation that will be offered by my colleague, the Senator from New Mexico, chairman of

the Senate Budget Committee—does not take Medicare off budget. It contains huge trapdoors for anything labeled “Social Security and Medicare reform.”

In other words, they have a lockbox that leaks. They have a lockbox where the door is wide open. The money can be used for other purposes as long as they call it Social Security or Medicare reform. There is absolutely no definition of what constitutes Social Security or Medicare reform.

The proposal of my colleague does not add any new protections for Social Security and does not protect Medicare from sequester. This constitutes what I call the broken safe. The door is wide open to what my colleague from New Mexico is presenting.

Under the President’s budget, not a penny is reserved for Medicare. In fact, the President takes the Medicare trust fund and puts it into a so-called contingency fund available for other purposes. In fact, as we have already heard, he went to my State and told folks there that if they need money for agriculture, go to the contingency fund. If people need money for defense, they are being told to go to the contingency fund. If they need more money for education, go to the contingency fund. If they need money for a prescription drug benefit that really delivers something, go to the contingency fund. That money is going to be spent four or five times over.

Some on the other side say: Look, there is no trust fund surplus in Medicare.

That is not what the Congressional Budget Office says. On page 9 of the “Budget Outlook,” under the table “Trust Fund Surpluses,” they start with Social Security. Then they go to Medicare. And they point out that Part A of Medicare has over a \$400 billion surplus. They point to Medicare Part B. And that is in rough balance over the 10 years of this forecast period.

Some on the other side say: Oh, there is a huge deficit in Medicare Part B; therefore, we should not worry about the surplus in Medicare Part A. I just say to them, the law does not say that. The actuaries do not say that. Medicare Part A is in surplus. Medicare Part B is in rough balance. There is no justification for taking the Medicare trust fund that is in surplus and moving that money into this so-called contingency fund that is available for other spending. That is precisely what will get us into financial trouble in the future.

I hope my colleagues will support having a protection mechanism for both the Social Security trust fund and the Medicare trust fund. It makes sense for the country, it makes sense for taxpayers, and it makes sense for beneficiaries. Most of all, it makes fiscal sense. And that is what my amendment is all about: to wall off the Social

Security trust fund and the Medicare trust fund so they cannot be raided for other purposes.

I thank the Chair and yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, let me say I am very pleased this afternoon to be on the floor with Senator CONRAD. I think those who watch the Senate as it conducts business are probably, in the next 3 weeks, going to see a lot of us because we will have the whole budget up here for at least a week. Senator CONRAD manages it for the other side of the aisle, and I manage it on this side.

I am very hopeful that, while this is a very interesting and somewhat difficult issue today, we will handle it in a very civil manner between the two of us as to what we ought to do.

First of all, everybody should know that when we offered a lockbox on Social Security on this side—it is the only one you could really call a lockbox—the other side of the aisle opposed it because it was too rigid. And they found out from the Secretary of the Treasury it may have been even too difficult for the U.S. Government to manage in terms of managing its debts.

So we have come from that point to what we generally call a lockbox here, to make any expenditures from that fund that are not authorized in that law itself subject to a 60-vote point of order. That generally is called a lockbox because it will call it to the attention of those affected, and it will require a supermajority to vote for it. That is what our amendment does for both Social Security and Medicare. But what it does in both programs is exactly what the House did. It passed by over 400 votes. Essentially, it says only for Social Security and/or Social Security reforms. And on Medicare it says Medicare Part A and/or reforms.

My distinguished friend on the other side of the aisle would say we take Medicare off budget. We no longer get to count it as an asset of the budget. And in addition, it cannot be used for the reforms that are going to be necessary when we improve that program and add to it prescription drugs.

So the difference is big. As a matter of fact, it is as if my friend on the other side of the aisle had concocted an approach so we cannot get a tax cut because, for some reason, the \$1.6 trillion tax cut just is not within the grasp of those on the other side. They do not want to give that back to the American people. In a moment, or in closing arguments, I will share with you the fact that it is a very responsible tax cut. It is very small in proportion to the total tax take of the United States of America.

But for now let me just, again, discuss these two issues.

First, the distinguished Senator, Mr. KENT CONRAD, my opponent here would

take Medicare off budget and not permit it to be used for reform and say to us, use it to pay down the debt. I want to just take a minute to talk about the debt because everybody ought to understand.

The President of the United States has asked us to reduce the debt of the United States from \$3.2 trillion to \$1.2 trillion—a \$2 trillion reduction. The President says—as did President Clinton before him who also said, through his experts—that is all we can pay down without paying a big penalty and costing the American taxpayers money.

This little chart I have here shows what is going to happen to the ownership of American debt as we buy down the debt and attempt to minimize it. You can see, the red is all foreign investment and foreigners. That grows because they do not want to sell the American bonds. They hold on to them. I understand that if we said, you are going to pay those people anyway, even though they do not want to sell—they are under an arrangement they like in terms of the terms of the bonds—then what we would have to do is we would have to pay a premium that would cost the American people a 21-percent premium on the money we pay to them to buy down the bonds. We will pay a 21-percent premium.

Isn’t it amazing that we are being asked to vote for an amendment that, on the one hand, is calculated to prevent us from getting a tax reduction for the American people, and, on the other hand, unintentionally, I assume, we are going to have to pay that money at a 21-percent premium to foreign countries and foreigners from whom we are going to buy these bonds because we are going to say to them: If you don’t want to sell them, we want you to sell them anyway. It is similar to a marketplace gun you put there and say: Sell them to us. And, of course, we will throw away money in the process.

The amendment that will be voted on second is their lockbox and its operation. It is a lockbox for which everybody in this Senate has voted. It requires a 60-vote majority to use any of the Social Security trust fund for anything but Social Security or Social Security reform. It is the same lockbox on Medicare that we voted for heretofore on a number of occasions that says, Medicare cannot be used—I say to the Finance Committee chairman, who is bound by all these rules—for anything other than Medicare and/or Medicare reform.

I note the presence of the chairman of the Finance Committee. I note my friend, who is on the other side of the aisle on this issue, is a member of the Finance Committee. They have a very important job. They are going to have to decide whether they want to reform Medicare.

As a matter of fact, it is most interesting, for those who are interested in this debate, we had not had a formal Medicare reform put forth by the former President for 8 years. We have not had one put forth by the other side of the aisle, except in the Breaux-Frist amendment or bill which came out of a commission. We still do not have one from the other side of the aisle. I do not know why.

I am very hopeful the Finance Committee will, indeed, produce a bipartisan Medicare reform proposal—under the Domenici amendment, which is the second amendment, that can be done—because without reforms, the Medicare trust fund is doomed. There will not be enough money for the senior citizens.

As the chart demonstrates, by 2010, the spending exceeds the income; by 2018, the spending exceeds the income plus interest; and by 2026, the trust fund is depleted.

We already have heard testimony from experts that our tax reduction of \$1.6 trillion does not have anything to do with that. What has to do with that is that you must reform the Medicare system in order to get your job done.

I close by saying, I think the Medicare trust fund should be used for Medicare reform. I do not think it should be used to pay huge premiums to foreign countries and foreigners by trying to coerce them to buy the debt.

My last observation is, Medicare is a very mixed program. Part of it is paid out of the trust fund until there is no money. Then what will we do? And part of it, a big part of it, including doctors, home health care, and a long list of items, is paid for under Part B, which is the general taxpayer.

How would you split them apart and take one and put it off budget, to be used for debt service, and the whole other one just left there to be paid by the taxpayer?

I believe reform should include a process that would envision both of those problem areas and reform them, to the future benefit of our senior citizens.

I have great admiration for my friend on the other side, but I do think on this one, it is subject to a point of order and we ought to let it die. We ought to vote on the second one and approve it because the House did it, and it could become law because it would be the same as theirs. It is a very good way to attempt to save Medicare for nothing other than Medicare.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, let me respond briefly and then we will have a chance to hear from the chairman of the Finance Committee.

Senator DOMENICI said Democrats voted against a lockbox last year. That is only part of the story. Democrats voted for the lockbox that passed on a

bipartisan basis. We voted against one version of the lockbox that threatened, according to the Secretary of the Treasury, the ability of Congress to pay the national debt. Yes, we voted against the lockbox provision that threatened the good credit of the United States, but we supported the lockbox that protected Social Security and Medicare that passed on a bipartisan basis.

Second, the Senator says the House passed, by a huge margin, the lockbox he is offering. The House was not permitted to consider an alternative. This alternative, the one I am offering that passed the Senate last year, is far stronger.

Third, the Senator says we would take the Medicare Part A trust fund off budget. That is exactly right. We would treat it the same way we treat the Social Security trust fund to give it the full protection it deserves.

Finally, the Senator says we threaten Medicare reform and the ability to write a prescription drug benefit. That is not the case. My amendment creates a point of order against legislation that makes the trust fund less solvent, not more solvent. Medicare reform is intended to make Medicare more solvent, not less solvent. In addition, new spending for a drug benefit would not reduce the Part A surplus and, therefore, would not be subject to any point of order under my amendment.

This measure is not meant to defeat a tax cut or any other measure. It is designed to protect the Social Security and Medicare trust funds. This is what we voted for on a bipartisan basis last year. I hope we will do the same this year and say, whatever else we do, we are not going to raid the trust funds of Social Security and Medicare.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself 4 minutes of the time remaining.

Senator CONRAD's amendment is very bad medicine for our seniors, in terms of this fuzzifying up the issue. If we allow this to happen, we are going to perpetuate the hoax that Medicare is running a surplus so that we can postpone urgently needed improvements in Medicare.

The Senator's amendment also leads Americans into believing we can't provide tax relief for hard-working families and at the same time protect Medicare and Social Security. The Senator is just plain wrong because over the next 10 years we will be spending \$3.8 trillion just on Medicare. That is more than two times the size of any proposed tax cut. To say that we on this side of the aisle are shortchanging seniors is ludicrous. In fact, the Senator's amendment would shortchange Medicare patients by splitting Medicare in half and leaving Part B of the program,

including prescription drugs, unprotected.

In 1993, Congress voted to tax up to 85 percent of Social Security benefits and transfer those taxes into the Part A trust fund. In 1997, Congress voted to transfer the cost of home health out of Part A trust fund into Part B. Had these two actions not occurred, there would be no surplus in Part A. Medicare Part B will run a deficit of more than \$1 trillion over the next 10 years, completely offsetting the \$400 billion surplus in Part A. Splitting Medicare in half would only further these accounting gimmicks and mislead seniors into believing Medicare is secure. Of course, we know that is not the case.

We think it is time to be very open with our seniors about Medicare's financial condition. We have the opportunity this year to modernize Medicare, provide prescription drug coverage, and put the program on a sound footing for our seniors, particularly for baby boomers. We want to protect the Medicare surplus so it can be used for this purpose, and this purpose only.

Senator CONRAD's amendment will deprive seniors of what they need most, a stronger, updated Medicare program, by locking away the Medicare dollars and making them unavailable for much-needed improvements. Is this what our seniors want? I don't think so. They want something for future generations.

This lockbox approach has one additional problem: When you add it to the additional one-third of the on-budget surplus the amendment would then reserve for debt reduction, it would equal \$3.8 trillion. That exceeds the total amount of publicly held debt by \$700 billion, and it exceeds the amount of debt available to be repaid by \$1.5 trillion. As a result, the Government will be forced to invest the excess surplus in the private sector.

Federal Reserve Chairman Greenspan has warned that such investments could disrupt financial markets and reduce the efficiency of our economy. My colleague from New Mexico has said that very well and demonstrated it with the chart.

Moreover, it is important to remember that the Senate has already voted 99-0 in the year 1999 against allowing the Government to invest the Social Security surplus in the private sector.

I oppose the amendment by the Senator from North Dakota and support Senator DOMENICI's amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CONRAD. I yield time to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I very much appreciate the points made by our good friend from New Mexico, the chairman of the Budget Committee, as well as by Senator GRASSLEY, the chairman of the Finance Committee.

However, the long and short of it is, the amendment offered by Senator CONRAD is very simple. It is probably the only responsible thing to do. Essentially it says Social Security trust fund money is to be kept for Social Security. We are going to keep it in the trust fund so the trust fund continues to build. It also says that the Medicare Part A trust fund money is to be kept in that trust fund to be used as it is supposed to be used.

To be honest, we hear lots of arguments on the other side, but, frankly, they sound like Senators doing the administration's bidding by trying to desperately grab shoestring kinds of arguments to try to counter this amendment. If we look at all the arguments, they are transparently false.

No. 1, we are playing footloose with senior citizens because it would make it sound as if the Medicare Part A trust fund is in good shape. The fallacy of that is, if we rob Peter to pay Paul, if we rob Part A to pay for Part B, it is going to make the Medicare problem more urgent. I don't think any senior wants that.

Second, we hear: Those Democrats don't want to reduce taxes. That is a patently false argument. We are just saying protect Social Security, protect Medicare, because that is what our seniors expect, and that is what the baby boomers certainly expect when they retire on down the road.

Third, we hear the argument, gee, if this amendment passes, you are going to have to pay a 21-percent premium on foreign debt. That is totally false. Nobody knows where those figures come from, except I hear them from my good friend from New Mexico.

It is true that if this amendment were to be enacted, as it very much should, then earlier, rather than later, we could be facing the question of debt retirement and what debt would be involved and what not. But there are other options. We can use the money for other forms of savings—that is savings provisions outside Social Security or Medicare. Or if we come to the premium question on redeeming debt, we will cross that bridge when we get there. Nobody knows what the premium is. There is a debt rescheduling going on currently. We are buying back debt, and it is working.

My main point is that this is a very simple amendment. It is the most responsible thing to do because it starts to protect Social Security and Medicare for senior citizens and for the future.

I might add, Mr. President, the alternative amendment we are going to be asked to vote on has, as I think the Senator from North Dakota characterized it, a trapdoor. It is a "nothing" amendment. It doesn't do what it purports to do. If you want honesty in budgeting and in amendments, honesty in what provisions actually say, I ask

you to look at the language of the amendment offered by the Senator from North Dakota and look at the language of the alternative. You will very clearly see, if you read the language, one does protect Social Security and Medicare, the other does not.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I want to respond briefly to my colleague from Iowa who said a series of things that are just not so. He said this amendment is bad medicine for seniors. Come on. This amendment protects the Social Security trust fund, and it protects the Medicare trust fund. It prevents them from being looted and raided for other purposes. That helps seniors.

He says it suggests there is a trust fund surplus in Medicare. It doesn't just suggest it; there is one. This is from the Congressional Budget Office. It says very clearly there is \$400 billion in surpluses. The President's budget says \$500 billion in the Medicare trust fund.

The Senator from Iowa says you can't have a tax cut with this amendment. Nonsense. You can have a tax cut with this amendment. This only says don't raid Social Security, don't raid Medicare. The only way it endangers a tax cut is if their intention is to raid Social Security and Medicare to pay for one.

Now, finally, Senator GRASSLEY has the plan I have talked about being all mixed up. He has taken the \$2.9 trillion dedicated for reduction of the publicly held debt and he added that to the \$900 billion that is reserved for strengthening Social Security for the long term and says all of that money is designed to deal with short-term debt. Wrong. That is just wrong. The \$2.9 trillion is to eliminate our short-term debt. The \$900 billion is to deal with long-term debt. Unfortunately, they have not set aside any money to deal with long-term debt.

This amendment is simple. It is designed to protect the trust funds of Social Security and Medicare against raids for other purposes.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I think the Medicare trust fund should be used for Medicare and Medicare reform. I don't think we should use it to fund, in any way, a requirement that we pay huge premiums—some estimate as high as 21 percent—to attract foreign investors to retire our debt.

I yield whatever time I have to Senator FRIST.

Mr. FRIST. Mr. President, I rise to sustain the point of order against the proposal of the Senator from North Dakota for three reasons. No. 1, our trust funds need to be strengthened by combining the hospital trust fund with the

physician trust funds. That is Medicare. You need physicians and hospitals. The real question is, What do we do with the surplus on the hospital side? Medicare has a deficit. I think we should not tell taxpayers we are going to take that money and use it to pay down the debt. We ought to reassure them that we can take that money forward and use it to modernize Medicare, strengthen it, eliminate the redtape, and install tools in our Medicare system that explain and get rid of the fact that an aspirin may cost \$2. That makes our seniors mad.

Third, and last, every nickel that the taxpayer pays today will go for Medicare, will be used for Medicare. The President has said it. The underlying amendment by the Senator from New Mexico also will guarantee that every nickel paid in will be used for Medicare.

The PRESIDING OFFICER. The Senator from North Dakota has 1 minute 41 seconds remaining.

Mr. CONRAD. Mr. President, the argument of my colleague from New Mexico that somehow we are going to be paying big premiums to foreign debtholders has nothing to do with my provision here. My provision protects the trust funds of Social Security and Medicare against raids for other purposes. If you save the Social Security and Medicare trust funds in that way, there is no cash buildup problem until the year 2010—2010.

If the issues the Senator from New Mexico addresses become a problem, we have a lot of time to deal with it. You can save every penny of these trust funds and not have any of the problems he talked about, at least until the year 2010. Many of us believe we will never have them.

Mr. President, what is this amendment about? It is very simple: It says we are going to provide the same protection to the Medicare trust fund that we provide the Social Security trust fund. It says we are going to provide additional protection to the Social Security trust fund so that this Congress can't go back to the bad old days of raiding every trust fund in sight to pay for other purposes. That is what we used to do. We have stopped that practice. Let's make certain it doesn't start again. Let's protect the trust funds of Social Security and Medicare. It is the fiscally responsible thing to do.

Pursuant to section 904 of the Congressional Budget Act, I move to waive the applicable sections of the act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CONRAD. Mr. President, I also raise a point of order that the pending Sessions amendment violates section 306 of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. That point of order will be recognized when that amendment comes up. First, the Senate will vote on the motion to waive.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—53

Akaka	Dorgan	Lincoln
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Graham	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Rockefeller
Carnahan	Inouye	Sarbanes
Carper	Johnson	Schumer
Cleland	Kennedy	Smith (OR)
Clinton	Kerry	Specter
Conrad	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden
Dodd	Lieberman	

NAYS—47

Allard	Enzi	McConnell
Allen	Frist	Murkowski
Bennett	Gramm	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Campbell	Helms	Smith (NH)
Chafee	Hutchinson	Snowe
Cochran	Hutchison	Stevens
Collins	Inhofe	Thomas
Craig	Jeffords	Thompson
Crapo	Kyl	Thurmond
DeWine	Lott	Voinovich
Domenici	Lugar	Warner
Ensign	McCain	

The PRESIDING OFFICER (Mr. CRAPO). On this vote, the yeas are 53, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. SANTORUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 32

Mr. DOMENICI. I make a point of order on the Conrad amendment.

On the next amendment, does the Senator from North Dakota want to raise a point of order?

Mr. CONRAD. Mr. President, I raise a point of order that the pending Sessions amendment violates section 306 of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. Does the senator from New Mexico raise a point of order?

Mr. DOMENICI. Has the point of order been ruled on?

The PRESIDING OFFICER. The point of order has not been ruled on. The Senator from New Mexico has raised a point of order.

Mr. DOMENICI. Yes; he has. The point of order is that the Conrad amendment violates the Budget Act.

The PRESIDING OFFICER. On the amendment of the Senator from North Dakota, the Senator from New Mexico has raised a point of order that it violates the Congressional Budget Act. Since this is a matter of jurisdiction of the Senate Budget Committee, the point of order raised by the Senator from New Mexico is sustained and the amendment falls.

Mr. CONRAD. Mr. President, parliamentary inquiry.

Mr. WELLSTONE. Mr. President, could we have order in the Chamber? We can't hear.

The PRESIDING OFFICER. The Senate will come to order.

Mr. CONRAD. Parliamentary inquiry: Didn't the Senator from New Mexico have to have raised a point of order against my amendment before the amendment was voted on?

The PRESIDING OFFICER. The amendment was not voted on. The Senate voted on a motion to waive the Budget Act.

Mr. CONRAD. Mr. President, is it in order at this point for me to raise a point of order against the amendment?

The PRESIDING OFFICER. A point of order is now timely.

Mr. CONRAD. I raise a point of order that the pending Sessions amendment violates section 306 of the Congressional Budget Act of 1974.

Mr. DOMENICI. I move to waive that pursuant to the appropriate provisions of the law and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to waive the Budget Act in relation to the Sessions amendment No. 32. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 52, nays 48, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—52

Allard	Frist	Murkowski
Allen	Gramm	Nickles
Bennett	Grassley	Roberts
Bond	Gregg	Santorum
Brownback	Hagel	Sessions
Bunning	Hatch	Shelby
Burns	Helms	Smith (NH)
Campbell	Hutchinson	Smith (OR)
Chafee	Hutchison	Snowe
Cochran	Inhofe	Specter
Collins	Jeffords	Stevens
Craig	Johnson	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Ensign	McCain	Warner
Enzi	McConnell	
Fitzgerald	Miller	

NAYS—48

Akaka	Boxer	Carper
Baucus	Breaux	Cleland
Bayh	Byrd	Clinton
Biden	Cantwell	Conrad
Bingaman	Carnahan	Corzine

Daschle	Inouye	Nelson (FL)
Dayton	Kennedy	Nelson (NE)
Dodd	Kerry	Reed
Dorgan	Kohl	Reid
Durbin	Landrieu	Rockefeller
Edwards	Leahy	Sarbanes
Feingold	Levin	Schumer
Feinstein	Lieberman	Stabenow
Graham	Lincoln	Torricelli
Harkin	Mikulski	Wellstone
Hollings	Murray	Wyden

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 48.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The Chair will now rule on the point of order.

Mr. HATCH. Mr. President, I move to reconsider the vote. I am sorry.

The PRESIDING OFFICER. The Senator from Utah is correct in moving to reconsider.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair will now rule on the point of order. The amendment of the Senator from Alabama would add a new point of order to the Budget Act. Since this is a matter within the jurisdiction of the Senate Budget Committee, the point of order is sustained and the amendment falls.

The Senator from Connecticut.

Mr. DODD. Mr. President, just so we understand the order of things here, as I understand it, my friend from Utah has a brief statement he wants to make, and then my colleague and friend from New York has a request to make, and then I would ask unanimous consent, at the conclusion of both of these, the statement and request, that the Senator from Connecticut be recognized to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. Mr. President, reserving the right to object, I would like to put my name in the queue after the Senator from Connecticut has offered an amendment.

The PRESIDING OFFICER. Does the Senator from Utah raise an objection?

Mr. HATCH. I do raise objection to that.

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. Mr. President, I withdraw my reservation and suggestion.

The PRESIDING OFFICER. Does the Senator from Utah raise an objection to the original request which would have the Senator from Connecticut following the two statements?

Mr. HATCH. Would the Chair tell me the original request?

Reserving the right to object, what is the original request?

The PRESIDING OFFICER. The original request was that the Senator from Connecticut be recognized to offer an amendment following a statement

by the Senator from Utah and a request by the Senator from New York.

Mr. HATCH. Repeat the request one more time.

The PRESIDING OFFICER. The Senator from Connecticut has requested that following the statement of the Senator from Utah and a request by the Senator from New York, he be recognized to offer an amendment. Is there objection to the request?

Mr. HATCH. Is the offer of the Senator from New York an offer to make a statement only, or does the Senator want to call up an amendment?

Mr. SCHUMER. What I would like to do is get a time. I was assured, when I brought this amendment up last time, that we would get a vote on it. The regular order is still our amendment. We departed from it to do many other things. I want to get that assurance before the cloture vote tomorrow, that I get a set time when we can do that, which Senator GRASSLEY assured me of, as I can read here in the RECORD.

Mr. HATCH. Mr. President, let me object for now until Mr. GRAMM, the Senator from Texas, arrives on the floor.

The PRESIDING OFFICER. Objection is heard.

Mr. SCHUMER. Will the Senator yield?

Mr. HATCH. I yield for a question.

Mr. SCHUMER. I would say to the Senator, I have no problem waiting until we touch base with Senator GRAMM. I want to make as part of this order that I would then be allowed to take the floor and renew my request.

Mr. HATCH. Why don't we ask unanimous consent that I be allowed to make a statement as if in morning business and then the distinguished Senator may make his statement until the distinguished Senator from Texas gets here.

Mr. SCHUMER. Is he on his way?

Mr. HATCH. As I understand, he will be here in 5 minutes or so.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, I am not going to object to my friend from Utah making a statement under normal comity in this body. If I could have the attention of the Senator from Utah for a moment, I am obviously not going to object to his making a statement, nor would he object to my doing the same. I keep reading statements from some of the leadership that we should hurry up this bill so that we would be allowed to vote. The Senator from New York had his amendment here on Thursday of last week and hasn't been able to get a vote. We began the bankruptcy bill and it was pulled down at the request of the Republican leadership to bring up ergonomics. I hope that the Republican leadership will allow us to start having some votes on some of these amendments and not just wait until such time as we have a cloture vote.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. Mr. President, does the Senator want me to yield for a question? I just want to make a statement.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. So long as I don't lose my right to the floor after he finishes his 1 minute.

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

Mr. WYDEN. I thank my friend, the distinguished Chair. I am mostly interested in getting in the queue to offer an amendment with Senator SMITH. I would like to yield to Senator BOXER for a moment because I know her time is short. She has consulted with us on this amendment. I would like to yield to her for a quick moment.

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

Mrs. BOXER. May I just ask what the order is. Is there an amendment pending? Is Senator WYDEN's amendment pending?

Mr. HATCH. The Senator is asking me?

The PRESIDING OFFICER. The Chair advises that a series of amendments have been offered. All have been set aside. There are 24 seconds remaining on the unanimous consent request.

Mr. WYDEN. Mr. President, I wish to be in the queue here on an amendment on which I have worked with Senator SMITH, and Senator BOXER would like to make a quick comment. I will yield back. I thank the Senator from Utah for his courtesy. I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Oregon has expired.

Mr. HATCH. Mr. President, I understand we are going to go to Senator SCHUMER, and after the distinguished Senator from New York, the distinguished Senator from Connecticut.

Mr. DODD. Mr. President, I was going to offer an amendment. I graciously yielded to a couple of things happening here. I am happy to yield to people to make statements unrelated to the bill, but I want to be protected. I would like to ask unanimous consent that at the conclusion of these remarks, I be allowed to offer an amendment.

The PRESIDING OFFICER. Is there objection to the request?

Mr. SCHUMER. Reserving the right to object, I don't have a problem with that, except that I want to make sure that before we get to that, I get to make my request.

Mr. REID. Will the Senator from Utah yield for a brief statement on the subject matter before the Senate?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend, the manager of the bill, along

with Senator LEAHY, there is no question that there are amendments that should be voted upon. However, the distinguished Senator from New York is in a little different category because when he allowed his amendment to be taken down, the manager of the bill at the time, the chairman of the Finance Committee, someone who has worked on this bill for so long, this bankruptcy bill, Senator GRASSLEY of Iowa, said he would allow a vote on Senator SCHUMER's amendment. He said he didn't know when it would be, but there would be a guaranteed vote on that.

So I want to make sure the Senator from New York—everybody realizes he is in a little different category than everyone else, even though there are many other votes that should take place. There is no question but that the Senator from New York has been guaranteed and assured there would be a vote on his amendment. That is why he agreed last week to take it down.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HATCH. Mr. President, reserving the right to object, let me just say this. Let me make this statement: As I understand it, we are waiting for the distinguished Senator from Texas to get here because he has an amendment, I believe, to the amendment of the distinguished Senator from New York. And then I will put in a quorum call and we will get this resolved.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. I object.

Mr. MURKOWSKI. Mr. President—

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. Mr. President, I ask unanimous consent that the Senator from New York be permitted to call up his amendment, that there is expected to be an amendment to his amendment by Senator GRAMM, and I ask unanimous consent Senator GRAMM be permitted to do that, and that we then go to the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Mr. SCHUMER. Reserving the right to object, I am not here to try to hold up the business. I want to make sure that since my amendment—I don't think we have to move to it because of the pending business. I want to make sure we get a time agreement as to when we are going to vote on my amendment.

That is all I want. But I will not relinquish the floor or allow any amendment to be offered until we get a time.

Mr. REID. Will the Senator yield?

Mr. SCHUMER. I will be happy to yield.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. REID. Will the Senator from Utah allow me to make a brief statement?

Mr. HATCH. I will be happy to.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Mr. REID. I do not want him to lose the floor. I say to my friend from Utah, my friend from Vermont, and my friend from New York, I do not know where we got into the idea that we are going to have an amendment offered to Senator SCHUMER's amendment. I have the CONGRESSIONAL RECORD of March 8, 2001. Senator GRASSLEY said:

The point is we can assure the Senator from New York the yeas and nays on his amendment, not someone else's amendment. We can't assure the Senator from New York when we are going to vote on this amendment, but there is going to be a vote on the amendment.

My only point is, how can we now change this to say we are going to be voting on a Gramm amendment? The Senator from New York was assured a vote on his amendment.

Mr. SCHUMER. Reclaiming the floor.

The PRESIDING OFFICER. The Senator from Utah has the floor. The pending matter is the unanimous consent request of the Senator from Utah.

Mr. SCHUMER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. What I want to do—I see the Senator from Texas has come to the floor—is ask a question. Does the Senator from Texas have a second-degree amendment to my amendment which is the pending amendment?

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

Mr. SCHUMER. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. SCHUMER. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued the call of the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Connecticut be permitted to proceed with his amendment with a half hour time limit equally divided, and that immediately after the vote on his amendment, the distinguished Senator from New York be given the floor on his amendment.

Mr. DODD. Just to clarify how the amendment will be handled, will the Senator from Utah make it 45 minutes equally divided with no second degrees? Will the Senator add that element to it?

Mr. SCHUMER. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Utah has the floor.

Mr. SCHUMER. I object. That is it.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, so everybody understands where we are, the Senator from New York brought up an amendment on Thursday. He was promised on the RECORD by the manager of the bill that he would get a vote. The Senator from New York is within his rights to ask for that vote.

It seems to me to be a concern that everybody is holding things up so we cannot have votes. Is there any reason why we cannot set up a situation here—and both my friend from Connecticut and my friend from New York are on the floor—that we could have some kind of agreement that says, within the next 45 to 50 minutes, we could have at least two stacked votes, that of the Senator from New York and that of the Senator from Connecticut, with the understanding we can have one or two others after that; otherwise, we can spend as much time making unanimous consent requests to vote.

Why would that not be sensible? It is not just enough to say the Senator from Connecticut will bring up his, and after his vote on it we will have somebody else, if the vote turns out to be tomorrow afternoon at 5. I want to get a few votes today.

Mr. DORGAN. Will the Senator from Vermont yield for a question?

Mr. LEAHY. Sure.

Mr. DORGAN. I have not been involved in this discussion out here except to understand that today, yesterday, and Friday there was a great deal of complaining about this bill moving too slowly, it is not moving along, people are concerned and frustrated about it.

My understanding is that the Senator from New York offered his amendment, was committed to having a record vote on his amendment, and now we see delay, delay, delay on getting him a record vote on his amendment.

I ask the Senator from Vermont, is it his understanding the Senator from

New York has a commitment that he will get a vote on his amendment?

Mr. LEAHY. I tell my friend from North Dakota it is in the CONGRESSIONAL RECORD that the majority side gave a commitment to the Senator from New York to have a vote. I would like to know when that vote will occur. I am a man of great and deep abiding faith, and I even believe in miracles, but I would feel a little more comfortable if, instead of dealing with a miracle, we had a precise time.

I suggest we have a vote at 4:45, 5:15 or something like that on the amendment of the Senator from New York, and following that, a vote on the amendment of the Senator from Connecticut, followed by votes on other amendments.

Mr. DORGAN. Is it the case if the Senator from New York does not get a vote and there is a cloture vote that prevails, the Senator from New York will not ever get a vote on his amendment?

Mr. LEAHY. It is a possibility that the Chair may rule it is not germane and he would not get a vote, contrary to the commitment given by the Senate majority.

Mr. WYDEN. Will the Senator yield?

Mr. LEAHY. Without losing my right to the floor.

Mr. WYDEN. I am baffled why it has been so difficult to set up a queue. I have an amendment with Senator SMITH. I worked very closely with Senator BOXER to make some perfections on which she insisted. We are here to go with the queue so Senator DODD's and Senator SCHUMER's interests are protected as well as others.

Perhaps we could be enlightened what it will take to get a queue so a bipartisan amendment such as ours can go forward.

Mr. LEAHY. I don't know. We have several pending amendments that could all be voted on. I have one or two. We have the yeas and nays ordered, and I am willing to have a 2- or 3-minute time agreement.

I suggest to those who keep complaining about why this is taking so long, the amendments we know are going to require rollcall votes, we could dispose of more than half of them by 7 o'clock this evening.

Mr. REID. Will the Senator yield?

Mr. LEAHY. I yield without losing the floor.

Mr. REID. Mr. President, we work in this body by unanimous consent, by agreement. The senior Senator from New York, in good faith, allowed the Senate to proceed on Thursday with the express agreement he would have a vote on his amendment. I know the good faith of the Senator from Texas. He believes, at least it is my understanding, that some of the subject matter in this amendment that the Senator from New York has brought is under the jurisdiction of the Banking

Committee. That may be true. But the fact is, there was a gentleman's agreement in this Senate that Senator SCHUMER would have a vote on his amendment.

I think it would set a bad tone in this bipartisan Senate if someone goes back on their word. When a manager of a bill is operating in the Senate, he is operating in the caucus that he represents—in this instance, Senator GRASSLEY, one of the most senior Members, chairman of the Finance Committee. No one has been more heavily involved, with the possible exceptions of Senators LEAHY and HATCH.

I think we should get a time set to vote on the Schumer amendment. If my friend from Texas has an amendment, he should propose it.

I think it will create a very difficult situation if someone such as Senator SCHUMER is told by a manager of the bill he will have a vote and suddenly that agreement is voided. That is, in effect, what is happening. It would set an extremely bad tone.

Mr. LEAHY. I yield for the purpose of a question.

Mr. GRAMM. I will get recognized on my own.

Mr. SCHUMER. Will the Senator yield?

Mr. LEAHY. I yield without losing my right to the floor.

Mr. SCHUMER. I understand the difficulty we are in. I understand the difficulties of the Senators from Connecticut and Oregon. However, as was stated, I was promised a vote, unequivocally. I could have insisted on the vote then and there. The Senator from Texas wouldn't even have been on the floor to object. I didn't.

I will repeat the words, because this has been going on long enough. I—Mr. SCHUMER—said, from the March 8 RECORD:

If the Senator from Iowa will yield, as long as we get the yeas and nays on this amendment in due course.

Previous to that, the Senator from Iowa had requested that I temporarily lay aside the amendment.

And Mr. GRASSLEY said:

The point is, we can assure the Senator from New York the yeas and nays on his amendment.

That is as good an assurance as one can get on this floor. I feel constrained to object to anything moving forward until we get an agreement as to when we will vote on my amendment. I offer this to think about. I know the Senator from Texas wants to study it. We could, for instance, debate the amendment of the Senator from Texas for 45 minutes, debate my amendment for 45 minutes, and move to vote on both the amendment of the Senator from Connecticut and my amendment. Or we could use some other process.

Until I am given an assurance that we will have a vote on this floor on this amendment, until I am given a time—

I have been given an assurance; I should not have to be given a second—until I am given a time as to when we will vote on my amendment, I am constrained to object to every amendment, even those from friends, even those with whom I might agree.

I yield.

Mr. LEAHY. Mr. President, I will yield the floor in a moment. I know the Senator from Texas wishes to speak, and I don't want to deny him that privilege.

The Senator from New York was given a commitment by the Republican leadership to have a vote. Frankly, at the rate we are going, I don't see that commitment being fulfilled. I have been here 26 years and I have never seen an instance where the majority—and I have been here three times the majority and three times the minority—I have never seen an instance where the majority has given such a commitment that hasn't been carried out.

I urge Senators on both sides of the aisle to make sure this will not be the first time in 26 years such a commitment was not carried out. This is a very serious matter.

There are only 100 Members who represent a nation of over a quarter of a billion people; 100 Members have a special responsibility because we are a small number. One is a responsibility to always carry forth our commitment. The Senator from New York has a commitment. It should be carried out. Frankly, we are only 3 months into this Congress. On a bill as serious as this, we should not have to be debating keeping a commitment that is laid out in the CONGRESSIONAL RECORD but, rather, try to find how to get the votes and vote amendments up or down.

I have amendments. I am prepared to go to vote with a 2- or 3-minute time agreement. Let's not delay on the Senate floor and then hold press conferences by the Ohio clock saying: We can't understand why this bill is taking so long; I guess we have to file cloture.

The fact is, the bill could have been finished last week if people had let the votes occur.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, first, I just came into this discussion. I've had a lot of people speaking on my behalf, and I greatly appreciate it, but I am even more appreciative of the right to speak for myself. I never made any agreement with regard to this amendment.

One of my predecessors, Lyndon Johnson, used to say, "I resent a deal I am not a party to."

Having said that, when I read Senator GRASSLEY's comments in full, I do not see the deal that our dear colleague from New York sees. Senator GRASSLEY says on March 8, on page S 2032, "The

point is we can assure the Senator from New York the yeas and nays on his amendment. We can't assure the Senator from New York when we are going to vote on the amendment."

Reasonable men looking at the same facts are prone to disagree, as Thomas Jefferson said. But it looks to me as if this is a commitment to have the yeas and nays on having a rollcall vote. I don't see any commitment about ending debate on the amendment in advance.

Having said that, let me say what I want to say.

No. 1, I will object to a time limit on any amendment within the jurisdiction of the Banking Committee from this point forward. We have all had a good time. We have debated a lot of amendments, many of which were of dubious merit and no relevance whatsoever to the underlying bill. But we have reached the point now where you are either for the bankruptcy bill or you are against it. I am for it. And I think we need to get on with our job. Cloture has been filed. We are going to vote on that tomorrow.

What I am willing to do is sit down with the Senator from New York and his staff, if we can do that, and try to figure out exactly what it is he is trying to do, get an opportunity to raise concerns I have, and then basically make a decision as to whether we can move forward with an amendment or substitute. But in terms of reaching a resolution, the best use of our time would be to sit down for a few minutes with our staff and see if we can potentially work something out. I would like to propose that to my colleague from New York.

Let me also make clear, it would make me happy to have no more amendments. I don't understand why we are continuing to have all these votes. If the Senator wants to hold the Senate up and not allow votes, that doesn't break my heart. But that is up to the Senator from New York. What I would like to do is see if something can be worked out and for the two of us and our staff to sit down and see if something can be worked out.

Since there is confusion about what Senator GRASSLEY meant, I don't have any doubt that the Senator from New York reads it the way he is saying it is written. I read it the other way. The point is, perhaps something can be worked out. However he wants to proceed, I think our time would be well spent to take about 10 minutes and sit down and talk to the amendment.

With that, let me 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. HATCH. 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. HATCH. Mr. President, I ask unanimous consent that the Senate now resume consideration of the Schumer amendment, No. 25, that the amendment be modified, and following a statement by Senators GRAMM and SCHUMER—with Senator GRAMM going first—for up to 5 minutes each, the amendment be temporarily laid aside in order for Senator DODD to offer an amendment, No. 75.

I further ask consent that there be 40 minutes equally divided for debate in relation to the Dodd amendment and, following that time, the Senate proceed to vote in relation to the Schumer amendment, to be followed immediately by a vote in relation to the Dodd amendment, and that no second-degree amendments be in order prior to the vote.

I further ask consent that following those votes, the Senate proceed to consideration of the Wyden amendment, No. 78.

The PRESIDING OFFICER. Is there objection?

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Reserving the right to object, I, first of all, express my appreciation to the chairman of the Banking Committee for allowing us to go forward. I understand, as I indicated earlier in the day, the sincerity of his concern about this. I am happy to have him claiming jurisdiction. As I indicated to him, I have the same problem in my committee—Environment and Public Works—always trying to catch up to what the Energy Committee has done to us. So I express my appreciation of the entire Senate for the Senator's cooperation and also the patience of Senator DODD and the general work of everyone. I think this is a good agreement and we can get rid of this bill in a timely fashion.

Mr. HATCH. Mr. President, before you rule on my unanimous consent request, I would like to express my appreciation to both the distinguished Senator from Texas and the distinguished Senator from New York, and also the distinguished Senator from Oregon, as well as the distinguished Senator from Connecticut, for working out these various matters.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 25, AS MODIFIED

The amendment (No. 25), as modified, is as follows:

At the appropriate place, insert:

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, U.S. Code, is amended by adding at the end the following:

“(p) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the

Truth in Lending Act (15 U.S. Code 1601 et. seq.), or any interest in a consumer credit contract as defined by the Federal Trade Commission Preservation of Claims Trade Regulation, and that interest is purchased through a sale under this section, then that person shall remain subject to all claims and defenses that are related to the consumer credit transaction or contract, to the same extent as that person would be subject to such claims and defenses of the consumer had the sale taken place other than under title 11.”

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized for up to 5 minutes.

Mr. GRAMM. Mr. President, this is a very complicated issue. I am opposed to the amendment. There was a dispute about whether an agreement had been reached. I think you can read the language and argue it one way or the other, but the Senator from New York thought he had an agreement. And if he thought he had an agreement, I am willing to defer to it.

Here is the whole argument in a nutshell. The amendment would affect insurance companies, mortgage companies, securities companies. It is a change in current law. Here is the whole issue.

Currently, if I have a mortgage, or if I am a customer of a company, and the company holds an asset as a result of my doing business with them, when bankruptcy occurs and that company goes out of business—declares bankruptcy—my ability to file a claim against those assets is severed. Why is that the case? It is severed because at that point the people who are creditors of the company that has gone bankrupt have first claim against its assets.

If the amendment of Senator SCHUMER is adopted, well-intended as it is—and I am sure we will have dire examples of why it would be a good thing in some very limited cases—what it will really mean is that if I have a mortgage with a company that goes bankrupt, under current law the creditors of that company can sell that mortgage to try to pay off their debt. Under the Schumer amendment, at that point, never having raised any complaint whatsoever, I would have the right to come in and say: I believe there was something wrong. I never raised the point before, but now that the company has gone bankrupt, I want to claim that there is a problem with that loan and whoever bought the loan should carry the problem with them.

Here is the problem in a nutshell: This will destroy the secondary market for the assets of bankrupt companies. Now, who will suffer? Senator SCHUMER is going to say, maybe these people are crooks. But they are not going to suffer. They went bankrupt. The people who are going to suffer are the creditors who won't be able to sell the assets of the company because there will be a potential cloud against those assets.

This is a perfect case in point where, to correct a little wrong, you create a great big wrong that hurts ten thousand times as many people. The reason we have bankruptcy laws is that the first claim against assets goes to creditors, not people who may have real or imagined or made-up grievances against the company.

Surely in the midst of bankruptcy law in a country where we have a sanctity of contracts and where creditors have first claim, we are not going to create a situation where we taint the assets of a bankrupt company so that the people to whom the company owes money will end up not being able to get their money. That is the problem in a nutshell.

I am not saying there may not be unscrupulous lenders. The point is, if you listen to Senator SCHUMER, he is, essentially, penalizing not on the unscrupulous party, but the people who are owed money. What we would do if this amendment passed is we would literally cloud the title and the marketability of every financial asset of every financial company in America.

I hope this amendment will not be adopted. If it is adopted, I am determined that it not become law. I urge my colleagues to look at this amendment and keep in mind that bankruptcy law is primarily aimed at protecting creditors. Destroying the marketability of financial assets by creating the potential to raise new claims after the bankruptcy is something that cannot be in the public interest. It does nothing to hurt the bankrupt company.

If we want to strengthen laws to put people in jail longer for bad lending practices, that is one thing. To punish creditors who have had nothing to do with this issue is fundamentally wrong.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. SCHUMER. Mr. President, I thank my colleagues from Nevada and Utah for helping, as well as Senators from Connecticut and Oregon.

I say to my good friend, the Senator from Texas, his statements about the proposal are about as accurate as the statements about my title. I was elected to the Senate 2 years ago. He was calling me “Congressman SCHUMER.” He was about as accurate in my appellation as he is in his description of the amendment.

First, this amendment is a simple amendment. When someone is terribly victimized because of a predatory lender, this amendment prevents that predatory lender from declaring bankruptcy, selling its loans into the secondary market, and then vamoosing, leaving the poor homeowner with nothing. This has happened time and time again. Predatory lenders have filed Chapter 11.

United Companies, First Alliance, Conti Mortgage, all listed hundreds of

individual suits, class actions, and State government enforcement actions pending when they filed. Worse yet, when they sold their loan portfolios, the purchasers of these loans were fully aware of the predatory claims pending and serious questions about whether all the mortgages were valid or enforceable.

This is not some innocent creditor. Any creditor who buys loans in bankruptcy knows the score. And even when they do, under present law they can say to the poor homeowner who has basically been financially raped: Sorry, you have no claim against us. Go sue the bankrupt predatory lender.

What this does in effect is allow new predatory lenders to exist because they know even if someone goes after them, having made all their money beforehand and paid it out in salaries and everything else, they can then sell the loans into the secondary market and start up the business in a new name. If the secondary lender knew they might be susceptible to the claims of the homeowner who was seduced, they wouldn't be so fast to buy the loan from the predatory lender.

This is an amendment that is narrow. I supported the amendment by my colleague from Illinois, but that was much broader, dealing with all predatory lending. Not this. This only deals with those predatory lenders who declare bankruptcy as a means of escaping claims of people who have struggled, who have saved their \$25 and \$50 and \$100 every week or month, so that they buy their home, and when they buy that home, they find that the home is in disrepair, that the mortgage is not what they were told, and their American dream is smashed.

If this amendment is so detrimental to honest secondary mortgage buyers, then why do Fannie Mae and Freddie Mac support this amendment? They are the largest secondary market makers in the country when it comes to mortgages, far and away, and they are supportive. I am sure they are not doing something to damage themselves.

This is not an overreaching amendment. It is a modest amendment. It is the most modest amendment that has been offered on predatory lending on this bill. It does not involve the Banking Committee, no more so than any of the other amendments that deal with money and banks and credit cards because we solely amend the bankruptcy code, not RESPA or TILA or any of the other laws in the Banking Committee's jurisdiction.

What it does is very simple: It deals with the kinds of situations that my good colleague, Senator SARBANES, mentioned when he rose in support of the amendment: That the predatory lender sells knowingly to the secondary mortgagor and that mortgagor then says: There is nothing I can do. Even though I knew these were hor-

rible loans that violated the law, I am immune from any claim.

It is a simple amendment. It is a fair amendment. It is a humane amendment. I expect that this kind of amendment on its own should pass close to unanimously in this body. I don't know if it will. Based on the merits, it could hardly be fairer or any less controversial.

I remind my colleagues that everyone who cares about this issue is watching this vote. It is a simple and fair one and seeks only to protect innocent consumers, American families, by whom we have each been elected.

I thank the Chair and yield the floor. The PRESIDING OFFICER. Under the previous agreement, the Senator from Connecticut is recognized.

AMENDMENT NO. 75

Mr. DODD. Mr. President, I send my amendment, No. 75, to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for himself and Mr. KENNEDY, proposes an amendment numbered 75.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Truth in Lending Act with respect to extensions of credit to consumers under the age of 21)

At the end of Title XIII, add the following:
SEC. 1311. EXTENSIONS OF CREDIT TO UNDER-AGE CONSUMERS.

(a) IN GENERAL.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

“(8) APPLICATIONS FROM UNDERAGE CONSUMERS.—

“(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

“(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by an individual who has not attained the age of 21 as of the date of submission of the application shall require—

“(i) the signature of the parent, legal guardian, or spouse of the consumer, or any other individual having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21;

“(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account; or

“(iii) proof by the consumer that the consumer has completed a credit counseling course of instruction by an approved non-profit budget and credit counseling agency that meets the requirements of section 111 of title 11, United States Code.”.

(b) REGULATORY AUTHORITY.—The Board of Governors of the Federal Reserve System

may issue such rules or publish such model forms as it considers necessary to carry out section 127(c)(8) of the Truth in Lending Act, as amended by this section.

Amend the table of contents accordingly.

Mr. DODD. Mr. President, I believe that most people, including most of my colleagues, will understand the purpose and intent behind this amendment. It attempts to inject a sense of responsibility not only among those who have received credit, which this legislation purports to accomplish, but it also asks those who are extending credit to assume some responsibility as well. That is truly what the underlying legislation fails to accomplish. In my view, the underlying legislation fails to recognize that while creditors will gain much from this legislation, while young people in our country, those under the age of 21, remain unprotected from the barrage of unsolicited credit card applications.

I am not exaggerating when I tell you that the mere signature of a student and the presentation of an identification card, indicating they are a student at that institution, is all they need to sign up for \$3,000, \$5,000, \$20,000 worth of credit.

This amendment merely attempts to inject some responsibility into a process that is out of control in this country. I will show you in a moment the statistics which bear this claim out. This is not a small problem. It is a growing problem. We must demand that the credit card industry bear some responsibility before they go on college campuses and accept applications from these young people, enticing them with the offer of a free baseball cap, or a free T-shirt without anything more than a signature and an ID. This is the growing problem across our nation that this amendment attempts to address.

Mr. President, I strongly support the purported goal of the underlying bill: to curb bankruptcy abuses. My fear is in our zeal to prevent abuses, we have cast the net too broadly, and snared some very honest and hard-working parents and young people.

Of equal concern is that this legislation does little to focus on an issue of fundamental importance, and that is trying to help consumers avoid declaring bankruptcy in the first place. That ought to be our first line of defense: to minimize or offer a means by which people would not have to seek bankruptcy protection. There is precious little in this legislation, which is heavily slanted toward creditors, to provide consumers with the tools they need to understand the causes and effects of filing for bankruptcy protection.

If those who incur debt must meet their responsibilities, so, too, must creditors who extend credit with no reasonable expectation that those debts will be repaid. My amendment simply requires that any credit card

issuer, prior to granting credit to persons under the age of 21, obtain one of three things: That they have a co-signature by a parent, guardian, or other responsible party; or the applicant demonstrates an independent means of financial support for paying off the amount of credit that is offered; or the completion of a certified credit counseling course, which is currently outlined in the underlying legislation.

This is not an onerous obligation. Federal laws in this country already put limitations on what people under the age of 21 can do. You can't drink alcohol anywhere in America if you are under age 21. The Tax Code makes the presumption that if someone is a full-time student under the age of 23, they are financially dependent on parents or guardians.

I ask a simple rhetorical question, if you will: Is it so much to ask that credit card issuers find out if someone under the age of 21 is financially capable of paying back the debt? Or that their parents or guardians are willing to assume financial responsibility? Or if they don't want to meet either of those two conditions, that they understand the nature and conditions of the debt they are incurring?

It is my understanding that there are responsible credit card issuers already requiring this information in one form or another. Is it too much to ask that the entire credit card industry strive to meet their own best practices when it comes to the most vulnerable in our society?

Providing fair access to credit is something I have fought for throughout my entire tenure in the Senate. Credit cards can play a very valuable role in assisting millions of people to pursue the American dream. They have been a wonderful asset for millions of people.

This amendment would not result in the denial of credit to worthy young people. However, it would help to protect financially unsophisticated young consumers from falling into a financial trap even before beginning their adult lives.

Mr. President, I don't believe this amendment is unduly burdensome on the credit card industry, nor is it unfair to people under the age of 21. It is the responsible thing to do. The fact is, these abusive creditors assume that if the young adult is unable to pay, they will be bailed out by their parents. Many times this means parents must sacrifice other things in order to make sure their child does not start out their adult life in a financial hole, with an ugly black mark on their credit history.

By adopting this straightforward amendment, the Senate would send a very clear message to those aggressive credit card companies that we will no longer countenance their abusive behavior. This amendment corrects that

behavior by making those overly aggressive credit card companies exercise their best judgment when it comes to the people who are obtaining their own credit cards for the very first time.

Additionally, the legislation before us offers no protection for the most vulnerable in our society, who ironically are the primary targets of many credit card issuers—college students. This amendment, which I am offering with my friend and colleague from Massachusetts, is very simple. It makes a modest attempt to help educate young people, as well as help credit card issuers help themselves by making sure that those persons applying for credit cards have the reasonable ability to repay those debts, or that someone will cosign with them, or that they will take at least a course on understanding what their credit responsibilities would be.

In the context of the bankruptcy debate, I think it is important to understand that an estimated 150,000 young Americans declared bankruptcy in the year 2000. I will repeat that. 150,000 young Americans, last year alone, filed for bankruptcy protection. That is a staggering number. According to Houston University professor, Robert Manning, the fastest growing group of bankruptcy filers are those people who are 25 years of age or younger.

In fact, the number of bankruptcies among those under the age of 25 is more than 6 times that of what it was 5 years ago. One of the most troubling developments in the hotly contested battle between the credit card issuers to sign up new customers has been the aggressive way in which they have targeted people under age 21, particularly on college campuses across America.

Solicitations of this group have become more intense for a variety of reasons. First, it is one of the few market segments in which there are always new customers to go after. Every year, 25 to 30 percent of undergraduates are fresh faces entering their first year of college. It is also an age group in which brand loyalty can be established. In the words of one major credit card issuer, "We are in the relationship business, and we want to build relationships early on."

Recent press stories have reported that people hold on to their first credit card for up to 15 years, but in my view, some credit card issuers have gone just too far. They irresponsibly, target the most vulnerable in society and extend large amounts of credit with absolutely no regard to whether or not there is a reasonable expectation of repayment.

Although college students are one of the primary targets for credit card marketers, they are not alone. One does not have to be in college to receive a credit card. In fact, one does not have to be old enough to read to qualify for one.

I am sure there are people who may be listening to this debate who can offer their own anecdotes.

I bring the attention of my colleagues a heartwarming story that was reported in the Rochester Democrat and Chronicle. The article relates the story of a 3-year-old child who received a platinum credit card with a credit limit of \$5,000. Her mother filled in the application. I quote what she said:

I would like a credit card to buy some toys, but I'm only 3 and my mommy says no.

This child's credit line is greater than the number of days she has been alive. The pitfalls of giving 3-year-olds platinum credit cards is self-evident, and this is happening with increasing frequency.

Let me take a moment to refocusing on the efforts of credit card companies on young people in our academic institutions. Credit card issuers are deeply involved in the business of enlisting colleges and universities to help promote their products. I find this shameful, and I hope they are listening: It is shameful what you are doing to these young people on your campuses.

According to Professor Robert Manning, banks pay the largest 250 universities nearly \$1 billion annually for exclusive marketing rights to sell their credit cards on college campuses.

Other colleges receive as much as 1 percent of all student charges from the credit card issuers in return for marketing or affinity agreements. Even those colleges that do not enter into such agreements are making money. Robert Bugai, the president of College Marketing Intelligence, told the American Banker that colleges charge up to \$400 per day for each credit card company that sets up a table on their campuses. That can run into tens of thousands of dollars by the end of just one semester.

A recent "60 Minutes II" piece that ran a few weeks ago vividly illustrated the impact that credit card debt can have on college students. A crew from the show "60 Minutes II" went to a major public university campus in this country and, with the use of hidden cameras, filmed vendors pushing free T-shirts, hats, and other enticements with credit card applications: Just sign on the dotted line, show me your ID, and you get \$5,000 to \$10,000 worth of credit. That is all you need. A signature, an ID, you get a hat, a T-shirt, and you incur \$5,000 worth of debt.

"60 Minutes II" revealed that the university, a well-known university in this country, was being paid \$13 million over 10 years by a credit card company for the right to have a presence on their campus and to use the university logo on its credit cards. This public university is actually making money off its students who use these cards. As part of the agreement, the university receives four-tenths of a percent of each purchase made with the cards.

Unbelievable. This university has a vested interest in getting their students in as much debt as possible.

We have a chance to do something about that. Look, if you are going to sign up a student under 21, and they do not have the independent means to repay, then a parent, guardian or other responsible party should co-sign or at least mandate that the student will take a course to understand what credit obligations are.

If you are in the military, you have a paycheck. This amendment has no effect on persons who have a source of income. I am not referring to those people. I am talking about kids who have no independent means of financial support, who are being given these cards without any consideration for what it is going to do to them or their families.

The "60 minutes II" piece also told the story of one student's circumstances, Sean Moyer. He made desperate attempts to handle the massive credit card debt he incurred. Sean Moyer's life began to spin out of control as a result of the huge debts racked up in 3 years in college. He could not get loans to go to law school like he dreamed. His parents could not afford to pay his way. So in 1998, Sean Moyer took his own life.

"It is obscene that the universities are making money off the suffering of their students," said Sean Moyer's mother. Sean Moyer had 12 credit cards and more than \$10,000 in debts when he committed suicide nearly 3 years ago. He had two jobs, one at the library and another as a security guard at a Holiday Inn, but he still could not pay his collectors.

Three years after his son's death, his mother still gets pre-approved credit card offers in Sean's name from some of the same companies to whom he owed thousands of dollars. One company pre-approved Sean for a \$100,000 credit line, according to his mother.

Do not misunderstand me. People have to take responsibility for their actions. If you are going to apply for a credit card, you have to understand your responsibilities. All that I ask is that there be a commensurate responsibility on those soliciting these individuals. That is all I am asking for: some sense of balance in this bill.

In the last Congress, I went to the main campus of the University of Connecticut in my home State to meet with student leaders about this issue. I was surprised at the amount of solicitations occurring at the student union at the University of Connecticut. I was surprised at the degree to which the students themselves were concerned about the constant barrage of offers they were receiving.

The offers seemed very attractive. One student intern in my office received four solicitations in 2 weeks: One promised "eight cheap flights while you still have 18 weeks of vaca-

tion." Another promised a platinum card with what appeared to be a low interest rate until you read the fine print that it applied only to balance transfers, not to the account overall.

Only one of four, the Discover card, offered a brochure about credit terms, but in doing so also offered a spring break sweepstakes. In fact, last year the Chicago Tribune reported that the average college freshman will receive 50 solicitations during their first few months at college—50 solicitations from credit card companies. All you have to do is sign up and show your ID. You get five grand of credit. Is it too much to ask that the student show they can repay these debts? Or have an independent source of income? Or, in the absence of that, mom and dad or guardian are going will cosign the application? Or the student will complete a credit education course to understand what credit obligations are? It can be any one of these three options. That is all this amendment does.

College students can get green-lighted for a line of credit that can reach more than \$10,000 on a signature and an ID, according to the Chicago Tribune.

There is a serious public policy question about whether people in this age bracket can be presumed to be able to make the sensible financial choices that are being forced on them from this barrage of marketing. It is very difficult to get reliable information from the credit card issuers about their marketing practices to people under the age of 21.

However, the statistics that are available are deeply troubling. I refer to chart #2, titled "Undergraduates pile on credit cards and debt." Nellie Mae, a major student loan provider in New England, conducted a recent survey of students who applied for student loans. It termed the results "alarming".

The study found the following: 78 percent of all undergraduate students have at least one credit card. That is up in 2 years from 67 percent to 78 percent. Of those students, the average credit card balance is \$2,748. That is up from \$1,879, 2 years ago.

In 1998, 67 percent of these students with credit cards, and in 2 years it jumped 11 percent. In the same 2-year period, the obligations have gone up nearly \$1,000, with every indication that student credit card debt is on the rise. We can do something now or wait until the problem is more severe. Ten percent of the college students have over \$7,000 in credit card debt; 32 percent of the undergraduates had four or more credit cards in the survey.

Some college administrators are bucking the trend of using credit card issuers as a source of income. Some have become so concerned they have banned credit card companies from their campuses. I applaud them. Some have even gone so far as to ban credit

card advertisements in the campus bookstores.

Roger Witherspoon, the vice president of student development at John Jay College of Criminal Justice in New York, banned credit card solicitors, saying indebtedness was causing students to drop out. Middle-class parents can bail out their kids when this happens, but lower income parents can't.

I don't completely agree with Mr. Witherspoon on that statement. I don't think middle-class parents can afford it, either. Middle-class parents trying to make ends meet can hardly assume this kind of burden. Only the most affluent of people can assume these obligations.

Mr. Witherspoon also said, "kids only find out later how much it messes up their lives."

An important component of this amendment is requiring credit counseling.

Let me explain how this works. Much like we encourage our children who reach driving age to take driver's education courses to prevent automobile accidents, I think we should teach young people, young consumers, the basics of credit to avoid financial wrecks. Educating our Nation's youth about responsibilities of financial management is critical. Currently, we hardly do a very good job.

There is overwhelming evidence student debt is skyrocketing. Most surveys also show the same group of consumers is woefully uninformed about basic credit card terms and issues. According to the Jump Start Coalition for Personal Financial Literacy, a non-profit group which conducts its annual national survey of high school seniors' knowledge of personal finance, financial skills are poorer today than 3 years ago.

I will not go into all of the data they provided, but a startling number, well over a majority of students, have little or no understanding how credit works.

Without any question in my mind, some credit counseling requirement is needed before you can sign on for the kind of debt being offered by the credit card issuers. The amendment I offer does not take any draconian action against the credit card industry.

I agree with those who argue there are many millions of people under the age of 21 who hold full-time jobs, are deserving of credit. I also agree students should continue to have access to credit, that we should not try to prohibit the market from making credit available to them. Again, this amendment does nothing to affect these persons. However, you ought to be required to have more than just a student ID to qualify for credit. That is all that is currently required. I don't think asking for a co-signature, or proof that you have a job id too onerous. Barring the absence of those two qualifications, you need only take a course in credit responsibility.

I think parents across the country would applaud the passage of this amendment. How many parents with kids who are currently in college are incurring more debt than they can afford. Are they perhaps affecting the ability of another sibling to go to school because of the debt they have accumulated? I think every mother and father in America would applaud a Senate that said: When you tighten the bankruptcy laws for debtors, make the credit card companies more responsible, too.

This is a modest amendment. Can't we adopt this amendment, include this sort of simple proposal, to add some basic sense of responsibility for creditors? This bill should help families, not hurt them. If I have to choose between the credit card companies versus the parents, I believe that we should side with the parents. On this issue, parents should get our vote.

I hope my colleagues, Republicans and Democrats, whatever else their views may be on this bill, will decide tonight, as parents and children gather around the dinner table, we will vote for this amendment, and cast a ballot tonight on behalf of families.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. The Senator from Utah has 20 minutes under his control; no time remains for the Senator from Connecticut.

Mr. HATCH. Mr. President, I appreciate the feelings of my colleague from Connecticut. He is a good man.

I think this is a discriminatory amendment which would unduly restrict access to credit cards for adults between the ages of 18 and 21. It is a paternalistic amendment and some believe it is paternalism at its worst. It puts a complete prohibition on the issuance of a credit card to those adults unless, one, their parent, guardian, spouse, or someone else with means agrees in writing to joint liability for the debt; or, two, if a person submits proof of independent means of repayment; or, three, the consumer proves he has completed a credit counseling program.

These hurdles, targeted at adults between the ages of 18 and 21, in our opinion, are not warranted. In short, adults between the ages of 18 and 21 can vote, serve in the military, obtain a driver's license, and under longstanding law enter into legally binding contracts. Discriminating against them when it comes to obtaining credit cannot be justified.

The unnecessary and burdensome requirements of making various paperwork submissions under this amendment will make the cost of credit more expensive for everybody and the process inefficient.

Of course, this amendment strikes me also as ironic. Those who oppose parental consent for abortion for those

under the age of 18 want parental consent for individuals over 18 to get credit cards. Something is wrong with that picture. That, it seems to me, is ironic.

Finally, we have already had a 55-42 vote to table an amendment that attempted to restrict access to credit to adults between the ages of 18 and 21. This amendment by the distinguished Senator from Connecticut is even more restrictive and unfair than that amendment.

One last comment I have is this amendment is based on the myth younger borrowers are less responsible than older borrowers. The truth is that they are more responsible.

As of 1999, 59 percent of all college students in America paid their balance in full at the end of each month compared to only 40 percent of the general population. And 86 percent of students pay their credit cards with their own money, not with their parents' money.

Frankly, there is little or no reason to have this amendment. I know it is well intentioned, but just the costs alone would be passed on to every person in the country. Frankly, I think this amendment discriminates against young people between 18 and 21, the age of accountability in the eyes of most States, where they can legally enter into contracts. What are we going to do next, take away their rights to enter into contracts because we don't trust them or we don't think they are adult enough to be able to handle these matters?

Again, I think this amendment is well intentioned, but these young people have all these obligations in life that they have to live up to, and they are living up to them. Yes, there are horror stories such as those the Senator has indicated, but I can give you horror stories among adults, too, 40, 50, 60 years of age who just didn't live up to the obligations to pay their debts.

I think bankruptcy is a sorry thing for everybody. I wish nobody had to go into bankruptcy. But I will tell you one thing: To pass on additional costs and additional burdens to everybody else because there are some people who are irresponsible is not the right thing to do.

Last but not least, under this bill, if they are under the average median income in their particular area, they will not have the obligation of going into the other chapter and having to try to pay back some part of these debts. I think society understands that.

What we are trying to do is get people to be more responsible in this area. I think this bill will go a long way towards doing that. I appreciate my colleague, but I have to move to table this amendment. I am prepared to yield the remainder of my time.

Does the Senator need any more time? I am prepared to yield the remainder of my time.

Mr. DODD. If the Senator will yield 5 minutes of his time for one Member

who would like to be heard on the amendment? I have no time.

Mr. HATCH. I am happy to yield to the distinguished Senator from New York from my time, and then if I could have 1 minute after that.

I yield 5 minutes to the distinguished Senator from New York.

Mrs. CLINTON. Mr. President, I join in support of this amendment because we know, from a lot of the work that has been done over the last several years, many students are being deliberately solicited, even targeted, for credit cards before they are financially independent, responsible, or knowledgeable about what it is they are signing up for. Story after story has demonstrated clearly that this particular amendment by my good friend, the Senator from Connecticut, targets a real problem.

I think all of us are committed to ensuring that people who are irresponsible with their financial affairs are held accountable. But I think we should look at our young people in a different category. It used to be no one could be held financially responsible when they were under 21. Then the age was dropped for many purposes to 18. But despite how quickly it seems our children grow up these days, there are many young people in college or out working who are not yet 21 who do not really have the experience to deal with the solicitations that come flooding through the mail and over the telephone that we know are targeting them with these credit card applications.

This morning, I was talking with another colleague of ours who told me he was babysitting for his very young grandchildren. He put them to bed, the phone rang, and the person on the other end asked for one of his granddaughters. Our colleague said: What is this about? He was told, much to his amazement, that his 5½-year-old granddaughter had been approved for a new credit card. He said he was shocked this kind of activity was going on and did not really believe it until it happened in his own family.

I urge our colleagues, regardless of the position we take on the underlying legislation, we should stand behind the basic principle that our young people should not be solicited, they should be given some better credit training as this amendment proposes, and there should be some sense of responsibility on the part of creditors before they reach out to entice our young people into these credit cards before they even know what it is they are signing up for. It looks all so easy, and they end up in trouble, with debts they cannot pay.

Let's try to avoid that. That does not mean they cannot ever become customers, but let's make it a little more reasonable in the steps that have to be taken in order for them to qualify.

I certainly urge passage of this amendment. I thank my good friend,

the Senator from Utah, for yielding time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I will just take a minute.

I understand this amendment is well intentioned. Think about it. We are talking about taking away the rights of people who have to go to work, people who have a driver's license, people who can enter into legal contracts. That is paternalism at its worst.

According to a national survey by the Educational Resources Institute, a majority of students use credit cards responsibly and do not accumulate large amounts of credit card debt. The majority of students, 59 percent, typically pay off their monthly balances right away. Of the 41 percent who carry over their balances each month, 81 percent pay more than the minimum amount due. In addition, the overwhelming majority of students pay their own credit card bills. The 14 percent of students who do not pay their own bills receive assistance mostly from parents or spouses.

The average monthly balances reported by students also appear to be manageable. Eighty-two percent of students with credit cards who know their balance report average balances of \$1,000 or less, and 9 percent have average balances between \$1,001 and \$2,000. In addition, slightly more than half of student credit card users report combined limits of \$3,000 or less. All of these factors indicate the majority of students use credit cards responsibly.

A significant portion of students with credit cards use them to pay for education-related expenses.

This amendment is much more restrictive than the prior amendment by the distinguished Senator from California, which was voted down.

I am prepared to yield back the remainder of my time, having said that.

VOTE ON AMENDMENT NO. 25, AS MODIFIED

On the Schumer amendment, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table amendment No. 25, as modified. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 44, nays 55, as follows:

[Rollcall Vote No. 24 Leg.]

YEAS—44

Allard	Cochran	Grassley
Allen	Craig	Gregg
Bennett	Crapo	Hagel
Bond	DeWine	Hatch
Brownback	Domenici	Helms
Bunning	Enzi	Hutchinson
Burns	Frist	Hutchison
Campbell	Gramm	Inhofe

Kyl	Nickles	Snowe
Lott	Roberts	Stevens
Lugar	Santorum	Thomas
McCain	Sessions	Thompson
McConnell	Shelby	Thurmond
Miller	Smith (NH)	Voinovich
Murkowski	Smith (OR)	

NAYS—55

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Edwards	Murray
Bingaman	Ensign	Nelson (FL)
Boxer	Feingold	Nelson (NE)
Breaux	Feinstein	Reed
Byrd	Graham	Reid
Cantwell	Harkin	Rockefeller
Carnahan	Hollings	Sarbanes
Carper	Inouye	Schumer
Chafee	Jeffords	Specter
Cleland	Johnson	Stabenow
Clinton	Kennedy	Torricelli
Collins	Kerry	Warner
Conrad	Kohl	Wellstone
Corzine	Landrieu	Wyden
Daschle	Leahy	
Dayton	Levin	

ANSWERED "PRESENT"—1

Fitzgerald

The motion was rejected.

Mr. HATCH. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 25, AS MODIFIED

The PRESIDING OFFICER. The question occurs on amendment No. 25, as modified.

Mr. HATCH. Mr. President, I ask unanimous consent that the yeas and nays be vitiated.

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

The question is on agreeing to the amendment.

The amendment (No. 25), as modified, was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that on the table.

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 75

Mr. HATCH. Mr. President, I move to table the Dodd amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the Dodd amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS—58

Allard	Bennett	Bunning
Allen	Bond	Burns
Bayh	Brownback	Campbell

Chafee	Hatch	Nickles
Cleland	Helms	Roberts
Cochran	Hutchinson	Santorum
Collins	Hutchison	Sessions
Craig	Inhofe	Shelby
Crapo	Jeffords	Smith (NH)
DeWine	Johnson	Smith (OR)
Domenici	Kohl	Snowe
Dorgan	Kyl	Specter
Ensign	Lincoln	Stevens
Enzi	Lott	Thomas
Feingold	Lugar	Thompson
Frist	McCain	Thurmond
Gramm	McConnell	Voinovich
Grassley	Miller	Warner
Gregg	Murkowski	
Hagel	Nelson (NE)	

NAYS—41

Akaka	Dayton	Lieberman
Baucus	Dodd	Mikulski
Biden	Durbin	Murray
Bingaman	Edwards	Nelson (FL)
Boxer	Feinstein	Reed
Breaux	Graham	Reid
Byrd	Harkin	Rockefeller
Cantwell	Hollings	Sarbanes
Carnahan	Inouye	Schumer
Carper	Kennedy	Stabenow
Clinton	Kerry	Torricelli
Conrad	Landrieu	Wellstone
Corzine	Leahy	Wyden
Daschle	Levin	

ANSWERED "PRESENT"—1

Fitzgerald

The motion was agreed to.

Mr. WYDEN. I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 78

The PRESIDING OFFICER. Under the previous order the clerk will report the Wyden amendment.

The legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself, Mr. BAUCUS and Mrs. MURRAY, proposes an amendment numbered 78.

Mr. WYDEN. Mr. President, I ask unanimous consent reading of the amendment be dispensed.

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

The amendment is as follows:

(Purpose: To provide for the nondischargeability of debts arising from the exchange of electric energy)

After section 419, insert the following:

SEC. 420. NONDISCHARGEABILITY OF DEBTS ARISING FROM THE EXCHANGE OF ELECTRIC ENERGY.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

“(6) The confirmation of a plan does not discharge a debtor—

“(A) in the case of a debtor that is a corporation, from any debt for wholesale electric power received that is incurred by that debtor under an order issued by the Secretary of Energy (or any amendment of or attachment to that order) under section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and requested by the California Independent System Operator; or

“(B) in the case of debt owed to a Federal, State, or local government agency named in an order referred to in subparagraph (A) for wholesale electric power received by the debtor except to the extent the rate charged

for power traded by the California Power Exchange delivered to the California Independent System Operator is determined by the Federal Energy Regulatory Commission to be unjust and immeasurable, in which case this subparagraph should only apply to debt for the actual cost of production and distribution of energy.”

(b) **AUTOMATIC STAY.**—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (28), as added by section 907(d) of this Act, by striking “or” at the end;

(2) in paragraph (29), as added by section 1106 of this Act, by striking the period at the end and inserting “; or”; and

(3) by inserting after that paragraph (29) the following:

“(30) under subsection (a), of the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6).”

(c) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 1141(a) of title 11, United States Code, is amended by striking “subsections (d)(2) and (d)(3) of this section” and inserting “paragraphs (2), (3), and (6) of subsection (d)”.

(d) **APPLICABILITY.**—This section and the amendments made by this section shall apply with respect to any petition for bankruptcy filed under title 11, United States Code, on or after March 1, 2001.

Mr. WYDEN. I offer this bipartisan amendment tonight on behalf of my colleague from Oregon, Senator SMITH, from the Pacific Northwest. It was perfected in close consultation with Senator BOXER because of the importance of this matter to Senator BOXER’s California constituents.

As all of our colleagues know, during the California energy crisis a number of regions of this country have tried to assist. In the Pacific Northwest we believe we have been more than a good neighbor. Bonneville Power and other governmental agencies up and down the west coast have repeatedly shifted power to California to help out at critical times.

Various California public officials have thanked profusely the Bonneville Power Administration and others for helping California avoid blackouts, help that was a real hardship for many in the Pacific Northwest because we have had a tough year, a low-water year. A variety of concerns were very much on the mind of those whom Senator SMITH and I represent.

To give an idea of how appreciative California public officials have been, I will read a letter Senator FEINSTEIN wrote to Bonneville Power Administration recently.

It reads:

DEAR MR. WRIGHT: I am writing to express my gratitude to Bonneville Power Administration for selling power to California yesterday.

Yesterday my State nearly had an energy catastrophe. In a meeting at my office yesterday to discuss California’s energy situation with Governor Davis, Secretary Richardson from the Department of Energy, and Federal Energy Regulatory Commission

Chairman Hoecker, calls came into my office that within the hour, a rolling blackout could hit California and that the California Independent System Operator (ISO) would not be able to purchase the power necessary to “keep the lights on.”

Twelve energy generators, marketers and utilities, mostly located outside of California, contacted the California ISO yesterday and indicated their reluctance to sell electricity into California without letters of credit from California’s investor owned utilities, who they feared would not be able to pay for this power because of their economic circumstances.

I am very grateful for BPA’s cooperation! THANK YOU!

Mr. WYDEN. Mr. President, thank-you letters are certainly appreciated, but Bonneville Power still is in a position where they need to be repaid. As of now, Bonneville Power is owed more than \$120 million by California, and various other public entities such as the Western Area Power Administration and various municipal utilities up and down the west coast are also owed funds. The fact is that they do not have shareholders as do the big, private California utilities. The people we are speaking for in this amendment do not have any stockholders to absorb the costs if they are not paid what they are owed. The public entities that would get a fair shake under this amendment would have to pass the costs on directly to the consumers if they were not in fact repaid.

Our amendment makes nondischargeable in bankruptcy any debts under the Department of Energy emergency orders or otherwise owed for electric power sent by Federal, State, or local governmental agencies. This means these debts would have to be paid in full unless there was a determination by the Federal Energy Regulatory Commission that the rates charged in California for electric power were unjust and unreasonable.

I want to make it very clear, because we have seen a lot of letters passed around, exactly what Senator SMITH and I are saying in this bipartisan amendment. All we are saying in this amendment is that if you are in a chapter 11 bankruptcy proceeding, you have to have a plan to pay the public back when the public has assisted you in these emergency situations.

Let me repeat that. There is no preference given to anybody—nobody—in this amendment. But it does say that instead of stiffing the people of the Pacific Northwest and some other public entities such as in the Western Power Administration that serves Montana and other areas, you have to have a plan in order to pay those folks back.

Mrs. BOXER. Will my friend yield?

Mr. WYDEN. I am happy to yield to my friend from California.

I want to make clear to her we very much appreciate her being involved because this is so important to her constituents. We tried to perfect it so as to address her legitimate concerns.

Mrs. BOXER. I thank my friend.

Mr. LEAHY. Mr. President, if I may interrupt, I hope Senators who have amendments they want to bring down, and I hope they will because I think many of us would like to get some amendments that would be in a position to be voted on perhaps early tomorrow morning so we can start fairly quickly.

As I said, we would have finished this bill last week had we not had ergonomics and other things interfering.

Mr. WYDEN. I express again my appreciation to the Senator from California because we want to come up with something that will work for the whole west coast and not pit people against each other. I am happy to yield to the Senator at this time.

Mrs. BOXER. Let me say to my friend, what I would like to do is state my understanding of the amendment by the two Senators from Oregon, and then ask my friend to comment if I am correct in my assumptions about this amendment.

First, I appreciate the Senator’s openness, working with me. The fact is I agree with my colleague; we on the west coast are going to have to work together. We need each other because there are some times when they will need power and we will have excess power. That may happen at some point. It has happened in the past. Certainly in this recent example we desperately need the power, and even though they had a hard time doing it, they came through for us. That is why we have thanked them. I say again a very big thank you on behalf of my constituency.

As we all know, power is not a luxury item; you need it to live. If you are elderly and it is cold, you need it to stay warm. You need the lights. Certainly our jobs depend on electricity. So I do think the spirit with which my friends offer this amendment is not a spirit of anger but I think it is a spirit of fairness.

I want to point out to my friend my understanding, and I hope when he comments on my remarks he will tell me if I am right, that there are 12, as we have read it, public power entities in California which will benefit from his amendment. In other words, it is not only Bonneville but, in essence, what I understand the Senator is saying is if public utilities stepped in and helped us during this period, the utilities should pay their bills. I think it is fair. I don’t think we can say thank you very much and then let them be there hanging, without getting paid.

I think it also says if the private sector was forced to sell power in addition to the public sector during that crisis period, in fact they will get paid, except they will not get paid back that portion that the FERC says was unfair and unreasonable.

I really appreciate my friend including that language in his amendment because while I want to pay people a fair price, I do not think we should have to pay it if it is gouging. My friend was very quick to say he would, in fact, add that language.

So my understanding is the purpose of this is to protect, in general, public utilities that are selling to California, to make sure they get paid; second, during that period of crisis, that any generator that was forced to sell, gets paid—except they do not get the part that may have been considered unjust and unreasonable charges.

As I understand it, the public power entities that will benefit from this are: California Department of Water Resources, City of Anaheim, City of Azusa, City of Banning, City of Burbank, City of Glendale, City of Pasadena, City of Riverside, City of Vernon, Sacramento Municipal Utilities District, Silicon Valley Power, and Western Area Power Administration in Folsom.

I have heard from these public utilities. They have told me, I say to my friend from Oregon, they are very frightened about not getting paid. While the big generators may be able to wait, these smaller public utilities really need this amendment so if the worst happens—and we certainly hope the worst will not happen—and there is a bankruptcy filing, these debts cannot be discharged.

Let me just wrap it up in this fashion. I know there are disagreements. The Governor does not agree with my position on it, Senator FEINSTEIN does not, others do. The fact of the matter is, I do not want to be known as a dead-beat State. California is too great to get that kind of reputation. I think what you are doing in this amendment is just assuring people that will not happen. I think it is important. It is the responsible way to proceed.

Frankly, as I look at reports that show our private utilities—and this is a fact—taking some of the windfall that they got at the beginning of deregulation and giving it to parent companies and, therefore, shielding it, this is not a good thing. This isn't a fair thing.

Why should a public utility that came to our rescue get punished because our private utilities took funds and essentially gave them over to a parent company? And now we cannot get at those funds.

So on behalf of these public power entities in California that will benefit from this—and, frankly, in the name of fairness—I think the Wyden-Smith amendment is a fair amendment. I hope that it shows my friends that I do think we are in this together, that the west coast has to stick together.

If this amendment is adopted—and I hope it is adopted—it is a signal that we are not saying, by virtue of this bill, that people can declare bank-

ruptcy, utilities can declare bankruptcy, and run away from these bills they owe public utility companies and also some of the private generators during that period of the threatened brownouts.

So I ask my colleague if he agrees with my interpretation of his amendment and for any other comments he might have.

Mr. WYDEN. I think the Senator has stated it extremely well and put a very complicated, by anybody's calculation, and arcane subject into something resembling English. I really appreciate the Senator's explanation. I think the position the Senator has taken not only is correct, but it is very gutsy.

We all know this is a divisive issue in many quarters. I want the public to know the reason we have nailed down the protection for those various public entities, such as those California municipalities, is because Senator BOXER stood up for them. I want it understood that those FERC provisions, again, in the name of fairness, came about because the Senator helped us put that language together. I think when one looks consistently at who is out on the floor of the Senate standing up for the consumer, the Senator has shown that again and again. I think the spirit the Senator has shown in working with us on this issue is exactly what it is going to take to bring folks together in the Senate and on the west coast to really address this issue in a comprehensive way for the long term.

I thank the Senator and would be happy to yield to her for any other comments.

Mrs. BOXER. I thank the Senator again. This is a long, drawn-out fight. I hope we can work together in the future.

Mr. REID. Would the Senator from Oregon yield for a unanimous consent request?

Mr. WYDEN. Absolutely.

Mr. REID. This is a very difficult issue. A lot of people want to speak on it. I see a number of them on the floor this evening.

Senator CARNAHAN, the junior Senator from Missouri, has been here, in and out, all day long. She has an amendment to offer. She has asked to speak on the amendment for 5 minutes. Then we would return the floor to the Senator from Oregon.

I would ask those on the floor who are so concerned about this amendment offered by the Senator from Oregon to allow Senator CARNAHAN to proceed. I ask unanimous consent—

Mr. WYDEN. Will the Senator yield?

Mr. REID. Yes.

Mr. WYDEN. Clearly, I think west coast Senators may not agree on everything debated tonight, but I think all of us can agree it is very appropriate that Senator CARNAHAN get 5 minutes at this point.

Mr. REID. Mr. President, I ask unanimous consent that the pending amend-

ment be set aside, that the Senator from Missouri be allowed to offer an amendment, and to speak on it for up to 5 minutes, and then the floor would be returned to the Senator from Oregon.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I just ask consent to speak for a moment before we go to the Senator from Missouri without it detracting from her time.

I am also delighted to see the Senator from Missouri here to offer and speak on her amendment. I want to add to what the Senator from Nevada said. He did his usual courtesy in providing for all Members on our side. The Senator from Missouri has been on the floor waiting to speak more today than has the Senator from Vermont as one of the managers. So it is only appropriate she proceed now. I commend the Senator from Missouri.

I yield the floor.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside. The Senator from Missouri is recognized for up to 5 minutes.

AMENDMENT NO. 40

Mrs. CARNAHAN. Mr. President, I call up amendment No. 40.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mrs. CARNAHAN], for herself and Ms. COLLINS, proposes an amendment numbered 40.

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

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

The amendment is as follows:

(Purpose: To ensure additional expenses associated with home energy costs are included in the debtor's monthly expenses)

On page 10, between lines 17 and 18, insert the following:

“(V) In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the International Revenue Service, based on the actual expenses for home energy costs, if the debtor provides documentation of such expenses.

Mrs. CARNAHAN. The purpose of the amendment that Senator COLLINS and I are offering is to make sure that extraordinary and unexpected expenses related to home energy costs are taken into consideration in the means test.

Under the bill, monthly utility expenses are calculated based on the Internal Revenue Service standards. But these standards are only updated once

a year from data based on the previous 12 months.

These standards do not take into account the potential for dramatic increases in home energy costs. The sharp rise in home energy costs this winter has put a tremendous strain on low- and middle-income Americans. People across Missouri and, indeed, across the country have experienced dramatic increases in their home energy costs. Therefore, I believe the potential for significant increases in home energy costs must be considered in the means test.

Our amendment ensures that a debtor can include an additional allowance in his or her monthly expenses if the debtor can document a sharp rise in home energy costs. The bill already allows a debtor to include an additional allowance for food and clothing in excess of the IRS standard.

The logic of this amendment is similar. It would allow bankruptcy judges to consider whether an additional allowance related to home energy costs is appropriate. But the amendment requires that an additional allowance is only permitted when it is reasonable and necessary, and when the debtor can provide documentation of the additional expenses.

The added discretion provided by the amendment will enable bankruptcy judges to consider that families may be paying double or triple the price for heating their homes as they did when the IRS last calculated local energy costs.

Our amendment will ensure that full bankruptcy relief is not denied to individuals and families because they have been saddled with extraordinary utility costs.

Mr. President, I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I commend the Senator from Missouri for the amendment she has offered. As does the Senator from Missouri, I come from a State that has some very cold winters and a lot of snow. I know how important this issue is.

Any of us who live, basically, in the frost belt know how an unusually severe winter, sometimes even an enormously severe winter, can push somebody over the brink into bankruptcy.

I think the distinguished Senator from Missouri—I assume we will vote on her amendment tomorrow—has raised an extremely good point. I hope all Senators, whether they come from the northern-tier States or from more temperate States, will look at her amendment and support it. I applaud her for proposing it.

I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I will now resume consideration of the

amendment I have offered with Senator SMITH. I, too, want to praise Senator CARNAHAN for an excellent amendment. I am happy she spoke on it at this time.

AMENDMENT NO. 78

Mr. President, just a couple of additional points. Again, I want to make it clear that nobody is going ahead of the line under this amendment that we have developed in close consultation with Senator SMITH. I want to make it clear that all that happens is in chapter 11 you have to have a plan to repay the public.

In providing for this review by the FERC, we are not in any way subjecting the Bonneville Power Administration and public entities to rate review by FERC. Rather, it would have rates for power traded or delivered in California subject to FERC review, to examine if they are unjust and unreasonable.

It was a very tough proposition for folks in the Pacific Northwest and elsewhere to send our power to California.

It has been a tough year. At the bipartisan town meetings Senator SMITH and I held earlier this year, again and again we heard from our constituents who were very irate—and understandably so—about being forced to send power to California. It doesn't seem to be fair—it is just not right—to say that all of those working families in the Pacific Northwest are going to be stiffed, that after thank-you letters have arrived, now somehow there could be a bankruptcy proceeding and the folks we represent just have to face the music and the extra cost.

I urge my colleagues to prevent this unfair result by supporting the bipartisan amendment Senator SMITH and I developed with Senator BOXER from California.

I am happy to yield to my colleague from Oregon at this time.

AMENDMENT NO. 95 TO AMENDMENT NO. 78

Mr. SMITH of Oregon. Mr. President, I thank my colleague. I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. SMITH], for himself and Mr. WYDEN, proposes an amendment numbered 95 to amendment No. 78.

Mr. SMITH of Oregon. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide for the nondischargeability of debts arising from the exchange of electric energy)

Strike all after the first word and insert the following:

420. NONDISCHARGEABILITY OF DEBTS ARISING FROM THE EXCHANGE OF ELECTRIC ENERGY.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by this Act,

is amended by adding at the end the following:

“(6) The confirmation of a plan does not discharge a debtor—

“(A) in the case of a debtor that is a corporation, from any debt for wholesale electric power received that is incurred by that debtor under an order issued by the Secretary of Energy (or any amendment of or attachment to that order) under section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and requested by the California Independent System Operator; or

“(B) in the case of debt owed to a Federal, State, or local government agency named in an order referred to in subparagraph (A) for wholesale electric power received by the debtor except to the extent the rate charged for power traded by the California Power Exchange delivered to the California Independent System Operator is determined by the Federal Energy Regulatory Commission (Commission) to be unjust and unreasonable in which case this subparagraph shall only apply to the debt determined by the Commission to be just and reasonable.”

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (28), as added by section 907(d) of this Act, by striking “or” at the end;

(2) in paragraph (29), as added by section 1106 of this Act, by striking the period at the end and inserting “; or”; and

(3) by inserting after that paragraph (29) the following:

“(30) under subsection (a), of the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6).”

(c) APPLICABILITY.—This section and the amendments made by this section shall apply with respect to any petition for bankruptcy filed under title 11 as amended by this bill, United States Code, on or after March 7, 2001.

Mr. SMITH of Oregon. Mr. President, my second-degree amendment is very similar to that of my colleague, Senator WYDEN's. I have changed only the date of the applicability for bankruptcy filings to those that occur on or after March 7, 2001, and I have further clarified that just and reasonable debt owed will be paid to government agencies. I did this because it is important to recognize the efforts made by the State of California during the first week of March to begin to restore stability to the west coast energy market.

On March 5, the Governor of California announced that the State department of water resources had signed 40 long-term contracts for electricity. Prior to this, the State had required the investor-owned utilities to purchase all their power on the spot market, making these utilities very vulnerable to short-term price spikes.

While California is making some headway on restoring the creditworthiness of its utilities, it is imperative that the utilities in California not be able to export their bills to Oregonians and other Western States by seeking bankruptcy protection and avoiding repaying other power providers in the

western United States for power that has literally kept the lights on in California in recent months.

My constituents and energy-sensitive businesses in Oregon are already feeling the effects of the price volatility in the west. Utilities in the northwest are facing current rate increases of 11 to 50 percent.

The customers of the Bonneville Power Administration are facing the prospect of 95 percent rate increases beginning in October, when current contracts expire.

Much of the media attention in recent months has focused on the cost and availability of electricity in California.

But the West Coast energy market extends to eleven other western States, including Oregon, that are all interconnected by the high-voltage transmission system.

That's why avoiding bankruptcy for California's utilities is important for Oregon and other western states. From the middle of December until early February, western utilities were forced to sell their surplus power into California, with no guarantee of being paid.

If the California utilities subsequently seek bankruptcy protection, it will be Oregonians who are stuck with the bill for California's failed restructuring effort.

In fact, certain Oregon utilities are already receiving bills from California's power exchange for funds owed to the exchange by California utilities.

Other utilities are being paid 60 cents on the dollar for sales they made as far back as last November.

In addition, the Bonneville Power Administration is owed over \$100 million for power sales it made into California as long ago as November 2000.

I know that certain state officials have refused to consider raising retail rates in California, claiming the State has the highest rates in the Nation.

However, let me point out just a few facts about California's energy use from publications by the U.S. Energy Information Administration:

California ranks 50th in the Nation in the amount of electricity the state can generate on a per capita basis. In fact, total generation has decreased nearly 10 percent in the last 10 years, while total consumption has increased over 10 percent.

In 1999, the average residential bill in California was actually \$2.70 less than the average Oregonian's bill.

In 1999, Californians actually paid 17 percent below the national average for their monthly electricity bills.

Further, California consumers paid 32 percent less than consumers in Florida, \$58.30 versus \$86.34.

To put a human face on what is happening in my State, let me tell you about a letter I recently received from a small school district in my State.

Basically, they are pleading for the energy crisis to be fixed because, as a

small school district, they are having to take resources away from students to pay energy bills. Their local utility has just added a 20 percent surcharge to the cost of electricity.

The district also heats a number of its school buildings with natural gas. In November 1999, the bill was \$4,383.59. By November 2000, the bill to heat the same buildings was \$11,942.

Another small school district in my State is concerned that its power bills may go up by \$100,000. For them, that means laying off two teachers.

Oregonians area already paying for California's failed experiment in electricity restructuring. It is exacerbated by one of the worst drought years on record in the Northwest.

Our rates are going up, but we should not have to pay twice for California's mistakes by being stuck with the unpaid bills for being a good neighbor and helping California keep the lights on in recent months.

I urge my colleagues to support my amendment to the Wyden amendment.

I offer just a few concluding remarks. What Senator WYDEN and I are trying to say to our friends and neighbors in California is that Oregonians are already paying once in the form of higher energy prices because of the situation created by California's law. If there is a bankruptcy, they will pay a second time because the Bonneville Power Administration, in order to make its treasury payments, will be forced to add \$100 million or more to the rates charged to Oregon, northwestern customers. This is not right.

We are simply saying, as kindly as we can, let's pay our bills. Let's be fair as neighbors.

On a personal level, I can only understand how officials of the State government of California must look with horror upon the rate cap that is there that is not allowing price signals for conservation and production to be sent. In very real and human terms, this law has created something of a Frankenstein that is roaming the lands of the Western States and it is wreaking havoc upon jobs, communities, schools, and discretionary income. It isn't right. It isn't fair.

I say to my friend from California: A regulated power market can work; a deregulated power market can work. One that is partially regulated and partly deregulated cannot work, as we are seeing to the lament of many people right now.

Our hope, Senator WYDEN's hope and mine, and others, is that we can simply say, as good neighbors, please fix this law. At the end of the day, if the ratepayers don't pay in California, the California taxpayers will pay because they are selling billions of dollars of bonds right now sucking up State surpluses that should be going to schools, should be going to streets, should be going to serve all kinds of human needs

but instead are going to pay inflated power rates.

At the end of the day, it is their issue, but it affects all of us. We want simply to say, with this amendment, please fix the law. Please pay this bill because we are in it together. We know that. We care about California being prosperous. Ultimately, the citizens of California will pay. They will pay as ratepayers or they will pay as taxpayers. It is, frankly, their choice. We don't want to be hung further with this obligation. We want to pay our bills.

I thank my colleague.

Mr. WYDEN. I thank my colleague. I will make a couple of additional arguments on my time. I know colleagues want to speak, and I certainly want to give them the opportunity.

Today as we listen to this discussion, perhaps the central argument that has been advanced by some, that the amendment Senator SMITH and I offer is unwise, is the argument that somehow what we are going to do is force California utilities into bankruptcy. I will take just a minute to say why I don't think that is the case and, in fact, why I think our legislation is an incentive to bring about the kinds of negotiations that everybody on the west coast would like to see.

As our colleagues know, there is an effort underway in California to look at a comprehensive solution which presumably would involve repaying in full everyone who is owed money for sending power to California. That is about \$12 billion in total. This amendment involves a few hundred million dollars owed under the emergency order plus debt owed to government agencies. The total, of course, is only a fraction of what is owed by California.

The question that is central is, How is it possible that California can go out and work on a deal to pay \$12 billion in full but ensuring repayment of several hundred million dollars, as Senator SMITH and I are calling for, is going to force California utilities into bankruptcy?

I want to come back to this one last point before yielding, regarding the effort that Senator SMITH and I are pursuing. As I touched on earlier, this comprehensive approach to repaying those who are owed money under discussion in California involves about \$12 billion in total. It just seemed to me to not be credible to say that California can work out a deal to pay \$12 billion in full, but somehow ensuring repayment of several hundred million dollars is going to force the California utilities into bankruptcy.

My view is that other creditors truly believe they are going to be fully repaid under this \$12 billion comprehensive solution. They would not risk forcing California utilities into bankruptcy. Other creditors will only be concerned about our amendment if, in fact, they don't think there is enough money to pay everybody back.

The amendment requires that Bonneville Power and other governmental agencies be repaid so that ratepayers and taxpayers don't end up holding the bag if these for-profit California utilities go into bankruptcy to avoid their debts. It does not—I repeat this—put these government agencies at the head of the line. It only keeps their current place in line to ensure that they would be repaid at some point.

All of us in this discussion are hopeful that there is not going to be a bankruptcy proceeding. I am prepared to work as one Senator—and I know Senator SMITH is as well—with our California colleagues to put in place a comprehensive agreement so that this amendment does not come into play.

I see my colleague from the State of California on the floor. I want to repeat that again. I am prepared to work with her, as I sought to do for several weeks now, to make sure that California can have every opportunity to put in place a comprehensive agreement so that this particular amendment never comes into play. But if that doesn't happen, and if there is a bankruptcy filing, and there isn't enough money to pay back everybody, then it seems to me that the people's power—the power that belongs to these public entities deserves an opportunity to get a fair shake in a chapter 11 proceeding so that our constituents are not shellacked as part of an effort to be good neighbors.

I yield the floor at this time.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, before I ask unanimous consent, it is obvious this has become a very partisan bill. We have people on both sides of the aisle on both sides of this issue. I guess we are making progress.

I ask unanimous consent that any votes ordered for the remainder of the evening with respect to amendments to be offered from the list submitted last Thursday by the leadership be postponed on a case-by-case basis until 10:30 a.m. on Wednesday.

I further ask unanimous consent that there be 2 minutes prior to each vote for explanation, that the votes be in stacked sequence with the first vote limited to 15 minutes and all remaining votes in the sequence limited to 10 minutes.

I further ask unanimous consent that, following those stacked votes, the Senate proceed to additional amendments and that the cloture vote be postponed to occur at 4 p.m. on Wednesday. Further, that just prior to the vote on cloture, Senator WELLSTONE be recognized to speak for up to 10 minutes.

This has been discussed with the Democratic leader and cleared on both sides of the aisle.

Mr. WYDEN. Reserving the right to object, just to ask the leader a ques-

tion: Is it the leader's desire that this amendment be voted on tonight?

Mr. LOTT. This amendment would be voted on, if a vote is required, at 10:30 tomorrow morning in the stacked sequence.

Mr. WYDEN. I withdraw my reservation.

Mr. LOTT. I know there is a good deal of discussion that needs to go forward. I hope Senators on the floor will continue on this amendment and other amendments. Then, if votes are ordered, we would stack them.

I believe there would be probably three amendments that would be offered tonight, and therefore we would have probably a minimum of three stacked votes tomorrow at 10:30.

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

Mr. LOTT. Therefore, there will be no further votes this evening. I thank my colleagues for their cooperation. I look forward to listening to the debate on this particular issue. It is very interesting. I will listen and decide how to vote as the night progresses.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. REID. Will the Senator from Alaska yield for some parliamentary business for a second without losing his right to the floor?

Mr. MURKOWSKI. I am happy to do that.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I appreciate my friend yielding.

This is a very interesting issue. A lot of people want to talk on it, we have a number of people who are going to be required to offer amendments sometime tonight. We want to have some idea. There are at least two Senators waiting to offer amendments.

If I could ask my friend from Alaska, does he have a general idea how long he wishes to speak this evening?

Mr. MURKOWSKI. The Senator from Alaska will probably speak not more than 10 minutes. I am just going to comment on the amendment and the second degree offered by my two colleagues.

Mr. REID. How long does the Senator from Oregon wish to speak this evening?

Mr. WYDEN. I think we will have some back and forth. But certainly the major points I have been interested in making have been made. I am happy to be sure that we are fair to all of our colleagues and that we move expeditiously.

Mr. REID. I am not trying to cut back anybody's time. Does the Senator from California have an idea as to how much time she may take this evening?

Mrs. FEINSTEIN. I appreciate the question. I believe very strongly about this amendment, and I believe it is going to have untoward consequences

and act directly contrary to what the Senator from Oregon believes. I cannot give a precise time. I have been here all day. I have done nothing else. I would like to have a chance to make the arguments against the amendment following the comments of the chairman of the Energy Committee.

Mr. REID. Just for the sake of Senators waiting around, does the Senator believe it will take an hour, hour and a half, 2 minutes, 3 minutes?

Mrs. FEINSTEIN. Probably not more than an hour.

Mr. REID. I thank the Senator from Alaska.

Mr. MURKOWSKI. Mr. President, first of all, let me share with you my own observation, with respect to the amendment and the underlying amendment by the two Senators from Oregon, that it is understandable their wanting to protect their public power entity, and to ensure that it receives just payment for power provided, to which they are entitled. What concerns the Senator from Alaska, as chairman of the Energy and Natural Resources Committee, are the questions of whether this establishes a precedent, whether this addresses the issue the Senator from Oregon has assured us would not be a factor, and whether this might force the two utilities in question into bankruptcy, with the resulting chaos that is pretty hard to predict.

What effect would it have on the California teachers' retirement fund which is invested in these utilities in the State of California? What effect might it have on the State employees' retirement? We don't know the answers to these questions. But there is a reasonable suggestion by knowledgeable people that this amendment may force a chapter 7 bankruptcy by these utilities. We all know what a chapter 7 is. It requires the utility to liquidate its assets and then the creditors stand wherever they stand.

Now to determine the intent of the amendment by the Senator from Oregon it is necessary to consider what the amendment says—it says the confirmation of a plan does not discharge a debtor. That means a bankruptcy judge cannot settle for 80 cents on the dollar, or even 50 cents on the dollar. It implies that, indeed, full payment must be made. That is what it says.

Now the question of the exceptions that go into section A of the amendment, and this covers the case of a debtor—that is, a corporation—from any debt for wholesale electric power received that is incurred by the debtor under an order issued by the Secretary of Energy. Recall that there was an order issued by President Clinton, and an order issued later by President George W. Bush, that required power-generating companies to sell into the California system; and the assumption has been, well, since the Government ordered it, and if the utilities can't pay

then there is a case against the Government.

But it is rather curious, in examining that question, that was not a formal acceptance by the utilities. It was an understanding that they sell. So the question, legitimately, that counsel may ask is: Does this ensure that those power companies that sold into Pacific Gas and Electric and Southern California Edison have a case against the Government if indeed there is not some form of guarantee in that regard for repayment?

The answer seems to be nobody knows yet whether those companies that generate power and sold to Pacific Gas and Electric can get paid from the Government on the basis of that order because of a lack of formality. That is something that is going to employ a lot of lawyers for a long period of time if it comes to that.

Then it says in section (B) of the amendment: In the case of a debt owed to the Federal, State, or local government agency named in an order referred to in subparagraph (A).

Except for certain exceptions, it includes that the discharge that is initiated in the first portion is confirmed; that a plan—that would be a plan submitted by a bankruptcy judge. The bankruptcy judge cannot discharge the debt.

Let us be realistic. That just sets a criteria to ensure that Bonneville is repaid. California got Bonneville's power. Bonneville is entitled to repayment. What concerns me is what we are doing here and not knowing the implications of what we are doing.

Let us look at the history of why the California investor-owned utilities are on the brink of bankruptcy. We found the State of California designed a deregulation competition program that was flawed from the start. Hindsight is twenty-twenty, but California ordered its utilities to sell the bulk of their generation, the nonnuclear and nonhydro generation assets. California also ordered its utilities to purchase power only from the spot market, preventing them from entering into contracts to protect consumers from wholesale price spikes.

That was fine as long as there was a big spot market and there was a lot of competition, and the utilities could get very favorable rates, but that changed.

Then California did something else. They also decided to prevent the pass-through of wholesale rates into retail rates, despite the fact that this is contrary to Federal law.

I remind you California has received the power. Now they have to pay for it. The point was made, whether it be the California taxpayer or the California ratepayer, and they are the same, that somebody has to pay for this.

My colleagues should understand that the California program applies only to investor-owned utilities. Rath-

er curious, because we have both municipally-owned and investor-owned utilities in the same competitive market. The result is potentially economic disaster for California's investor-owned utilities.

California's investor-owned utilities were required to purchase all of their on the spot market at high prices, and sell low on the State price-controlled retail market. You do not have to take Economics 101 to know if you buy high and sell low where you end up. You end up where they are: straight in bankruptcy. That is the reality of this situation.

Who is responsible? What is the solution? First, California has to act responsibly in that manner.

On the supply side, California must get over its aversion to new powerplants and transmission lines because the problem in California is having the supply necessary to meet demand. The supply is not there; yet the demand is there and it is increasing.

On the demand side, California simply has to recognize the realities and get over its unwillingness to pass through the wholesale costs. If the wholesale costs were passed through, we would not be having this debate. The utilities would not be on the brink of bankruptcy and Bonneville would have gotten paid.

Blaming others, driving utilities to the brink of bankruptcy, having the State buy power, taking over transmission lines, seizing utility assets is not going to solve California's problem. It only prolongs the agony and makes a lot of lawyers rich.

This reminds me of a recent survey which found that—this is evidently accurate—that two out of three people in California would rather have the lights go out than pay an increase in their rates. That is their choice, I guess, and if they continue to oppose powerplants and transmission lines some of them might get their wish.

There is no question that California faces a serious problem. We are sympathetic. We want to help them. We have to help them. But we have to find a meaningful solution. A Band-Aid approach that creates perhaps even more serious problems is what concerns me about this amendment.

It is not that the power suppliers the Senators from Oregon are concerned about are not entitled to payment. They are entitled to payment. They ought to be fighting for payment. Sometimes we throw the baby out with the bathwater, and I am not sure we know what we are doing here. This might force those utilities into bankruptcy, into chapter 7 where they simply take their assets and sell them off and you are a creditor like anybody else. I do not think that is what we want to happen, we want everybody to get paid.

I am also concerned about the bond holders, the teachers' retirement funds

that have been invested in Pacific Gas and Electric, and Southern California Edison. Do we have a responsibility to protect them? I do not suppose we have a direct responsibility, but we have an implied responsibility. Those people invested in those utilities for retirement in good faith, and we have a responsibility to know what we are doing.

If this thing goes into bankruptcy, I just wonder if we have achieved the objective by protecting solely the merits of the PMA, in this case Bonneville.

I can understand Bonneville wanting some assurance that they are going to get paid, but I am not so sure if they the utilities go into chapter 7 that they are going to be any better off than any other creditor. I wonder if that will not create a worse situation for the utilities, the customers in California, the Federal PMAs, and the entire west coast and Pacific Northwest.

That is my concern, but I do respect and recognize the efforts of Senator WYDEN and Senator GORDON SMITH to try to address protections for their constituents. They are doing what they have every right to do.

The fact is that California got their power and cannot seem to come up with a structure to pay for it. Make no mistake about it, this particular amendment does give preference under any interpretation to Bonneville, and it may set off other creditors. For example, and I ask my good friends from Oregon, what about the natural gas suppliers that have not been paid? The amendment does not address their particular situation, but it is similar to Bonneville. They have not gotten paid for their power.

What about other electricity that came from out of state? What does that do to those folks? Are they going to come in with an amendment later and say that we took care of Bonneville to ensure Bonneville received 100-percent payment, so why shouldn't the natural gas transmission companies that also have not been paid be taken care of? That is a concern.

I wish we could find another solution. Maybe the Senator from California can enlighten us a little bit about a legitimate way to provide the Senators from Oregon the assurance that their utilities are going to get paid somehow, as well as the other creditors.

The worst possible thing would be to force into bankruptcy the utilities and have the State of California take over. I do not think Government does a very good job of running businesses, whether it is the utility business or any other business.

I stand here as chairman concerned about the implications of this proposal; that it sets a precedent for other creditors who are going to want protection and an unknown. I wish we had spokespersons here from PG&E and Southern California Edison to tell us what the results of this are going to be, not only

on the citizens of California, but the ability of Bonneville to get paid so they can receive consideration for what they have provided, and that is consideration in the sense of power.

Mr. WYDEN. Will the Senator yield?

Mr. MURKOWSKI. I yield without losing my right to the floor, and I am happy to respond to a question.

Mr. WYDEN. I respond briefly to the point the Senator is making. It seems to me the Senator makes an interesting point and certainly raises some interesting legal questions.

The scenario just described is what Senator SMITH and I seek to prevent by keeping our amendment narrow, to involve government entities. In other words, if you were to broaden the scope of the amendment to all kinds of other parties, it seems to me the case would be more credible that perhaps you could have a scenario where you were driven into bankruptcy. That is why we kept it narrow. We believed keeping it narrow gave people an incentive to negotiate and increase the prospect that we wouldn't have this calamitous situation that the distinguished chairman of the committee is so correct to say would be bad for all.

Mr. MURKOWSKI. Perhaps we could have some enlightenment. I hope my good friend from California can give an indication of what the two utilities at issue think of this. The State of California and the ratepayers and/or consumers are prepared to meet this just obligation.

I yield the floor.

Mr. REID. Mr. President, I ask unanimous consent amendment No. 93, that is at the desk and has been filed by Senator DURBIN, and amendment No. 94, filed by Senator BREAUX, be called up and put in the ordinary course of amendments that are already pending.

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

Mr. MURKOWSKI. Mr. President, I would like to check with our leadership at this time. It is not my intention to object, but I would like to have a few moments to consider the request.

Mr. REID. If I may say to my friend from Alaska, if there is a problem with it, let's go ahead and get it done. If there is a problem, I will be happy to join with him to go ahead and rescind the unanimous consent request.

Mr. MURKOWSKI. I am very—I must object.

The PRESIDING OFFICER. Objection is heard.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator and Chairman of the Committee for his comments. He asked, what do the two utilities at issue think of this? I will respond and I will give the comment of Robert Glynn—the Chairman, President, and CEO of Pacific Gas and Electric. This is his company's position:

PG&E is at a critical point in sensitive negotiations to resolve an energy crisis that is affecting the Western United States. Our creditors have been willing to forbear in the interest of achieving a comprehensive solution that is fair to all parties. This amendment would change the relationship among creditors and could destabilize the fragile cooperation that currently exists. It would be a terrible irony if actions of the United States Government were responsible for tipping this situation over the edge.

That is the response of one of the major investor-owned utilities in the State of California.

I have input from the other, Southern California Edison, and I will read from a letter by John Bryson, CEO of Southern California Edison:

Unfortunately, the Wyden amendment undermines the solution being crafted within the State. The Wyden amendment would require that, in the event of bankruptcy, the power generators who have made significant profits from this crisis receive full payment before small businesses, banks and bond holders. This is not fair to the other creditors.

Furthermore, this amendment could trigger the bankruptcies that everyone is trying to avoid. Other creditors will not stand by and just watch as the amendment takes away their rights.

This is the reason I so strongly oppose this amendment. I don't believe the Senators who support this Wyden amendment have an understanding of what might happen. There is \$13 billion of debt out there. It involves banks all over the United States. It involves high-tech companies, it involves cities, it involves generators, it involves natural gas companies, it involves a wide range of debtors and creditors.

Right now, the State of California has made considerable progress toward resolving this crisis. More than anything, the State needs some time to conclude those negotiations. If the State is able to conclude negotiations, this means that the debt could be paid to the utilities, and would help exactly the creditors that Senators WYDEN and SMITH want to help.

At this point, the State doesn't need the Federal Government to step in and destroy the progress they have made. I have checked with bankruptcy attorneys, and I believe I am right. This amendment is unprecedented. Never before without a hearing has the Senate of the United States decided the pecking order of creditors and debtors for a potential bankruptcy of this size. This amendment rewrites the bankruptcy rules in favor of one set of creditors. It creates an enormous incentive, as the Chairman has just said, for other creditors to now push the utilities into bankruptcy before this amendment would be signed into law. It is like a run on the bank. So without a hearing, this amendment seeks to determine winners and losers.

There is not a single debtor or creditor that I know that supports this amendment. Virtually all of them have

opposed to this amendment. Even some of the people helped by the amendment are opposed. That includes the California Municipal Utilities Association, the City of Los Angeles, Duke, Enron, Calpine, and Williams who all oppose this amendment.

Let me quote from some of the letters I have received. I begin with the Governor of the State of California.

A critical component of the plan to resolve California's energy challenge is the return of our utilities to financial solvency. Our efforts have taken the form of painstaking negotiations between the State and the utilities to stabilize their financial condition. Any attempt to create a special class of debtor under Federal bankruptcy laws, may have serious repercussions to our efforts. Therefore, I am writing to express my strong opposition to Senator Ron Wyden's amendment to S. 420, the Bankruptcy Reform Act of 2001. Any actions on the part of the United States Senate might very well undermine all the progress we have made to this point in our negotiations with the utilities. This is a very delicate process and we urge the Senate to allow all parties in California to continue their work together to solve this crisis.

Now from the Electric Power Supply Association, which is the electric generating companies together:

This amendment seeks to give certain entities a favorable status in the event that California utilities fall into bankruptcy. Many companies have provided power to California's consumers and EPSA, the Electrical Power Supply Association, believes emphatically that all these entities deserve to be fully and fairly compensated. However, it is inappropriate for the Senate to try and create winners and losers in this desperate situation. Rather than orderly resolution, this legislation could lead to a premature declaration of bankruptcy and the inevitable liquidation of the California electric utilities assets in a legal free-for-all. We urge you to oppose the Wyden amendment.

Let me read from a letter submitted by a big electric generator, Williams—a generator that has profited mightily from this situation:

Williams is strongly opposed to any such proposal. In our judgment, intervention by the Congress in the California market in a way that picks winners and losers among similarly situated parties will only precipitate a deepening of the crisis. It will ripple ongoing efforts within the State to resolve the crisis and trigger an outpouring of litigation and legal maneuvering that would prolong the crisis, not resolve it. Restoring financial solvency to the local utilities is a critical element of any long-term solution to the electricity problem in California. If those utilities are forced into bankruptcy, the immediate result would be to plunge everyone involved in the crisis into protracted, uncertain, court proceedings. In our judgment, this proposed legislation will only serve to precipitate that bankruptcy. I fear the mere possibility that such an amendment might become law will leave those involved little choice but to trigger bankruptcy proceedings in order to protect their own interests.

Let me give you another generator's view, Calpine:

Under Senator Wyden's amendment, many out-of-state power producers, both public and private entities, would be made whole

under any eventual utility bankruptcy, while QF's, forced to sell by virtue of contracts rather than a federal emergency order, would likely be left with little or no recourse. Some of the cleanest, most environmentally desirable sources of energy would be severely disadvantaged by this action.

While on fairness grounds alone, we believe the Wyden amendment should be defeated, perhaps more importantly, we think the amendment would only worsen the California energy crisis. Creditors have shown remarkable patience to date, giving California state officials an opportunity to seek a solution that avoids utility bankruptcy. This amendment, however, could trigger an immediate bankruptcy filing in order for the filing to precede enactment of the legislation.

So you see, just by passing this, what we do is, to all the community out there that is owed money, we trigger their urge to move the companies into bankruptcy. That would be a huge mistake.

This letter is signed by the vice president of the company.

Mr. President, I would like to read from a statement by the Edison Electric Institute which, as I understand it, represents most electric utilities with the exception of Pacific Gas and Electric:

I am writing to express our concerns regarding a proposed amendment to S. 420, the "Bankruptcy Reform Act of 2001", that may be offered by Senator Wyden for himself and Senators Baucus and Murray. While there appear to have been several iterations of that amendment, the thrust appears to favor public power electricity suppliers in a utility bankruptcy proceeding by providing that debts to them for electricity are not dischargeable. The amendment also applies to debts for wholesale electric power received pursuant to the emergency order issued by the Secretary of Energy under section 202(c) of the Federal Power Act. This amendment raises large public policy concerns by affecting all utilities as well as those involved in bankruptcy proceedings.

First, it primarily advantages government-owned utilities who already are uniquely able to sell power at rates which are not subject to regulation by FERC. It makes no sense to give a bankruptcy preference to the only generators whose rates are unregulated. . . .

This amendment would undermine efforts underway to address the current electricity situation in California. All parties, including the Governor, the utilities and creditors, are trying to work out an agreement. Passage (as well as concern about the possible passage) of this amendment could disrupt these efforts and lead to immediate initiation of bankruptcy proceedings.

Mr. President, this is not me saying this. These are the major creditors and debtors in this situation, all of whom are saying that once you give preference to one, the others will trigger bankruptcy to protect their rights. And, in protecting their rights, it will push these utilities into bankruptcy because that is the only way they can do it.

If you push these utilities into bankruptcy, I believe it is likely they will go into chapter 7—not 11 or 13, but 7,

and, therefore, they will go out of business altogether. So it is a very dangerous thing to do.

The surprising thing is we have this amendment on the floor, in view of the fact that virtually all of the major creditors and debtors oppose it because they know exactly what is going to happen.

We also have unions. I would like to have printed in the RECORD the International Brotherhood of Electrical Workers' letter. They represent over 800,000 electrical workers, who also believe the effect this would have would be to trigger a bankruptcy.

I ask unanimous consent these letters in their entirety be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CALPINE,
1200 18TH STREET, NW, SUITE 850,
Washington, DC, March 12, 2001.

HON. DIANNE FEINSTEIN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to urge your opposition to an amendment that will be offered by Senator WYDEN to the bankruptcy legislation currently being considered by the full Senate. It is my understanding that Senator WYDEN intends to offer an amendment that would ensure that public power producers and others who sold power to California under the Federal emergency order are made whole in any bankruptcy proceeding, thus allowing these select creditors to be treated preferentially.

As you may know, most of Calpine's power plants in California are "qualifying facilities," commonly referred to as QFs. QFs are cogeneration and renewable energy facilities, all located in the state of California, which provide power to the California utilities under contracts. Despite the contractual obligations of the utilities, the QFs have not been paid for several months and today over \$1 billion is owed collectively to these in-state companies.

Under Senator WYDEN's amendment, many out-of-state power producers, both public and private entities, would be made whole under any eventual utility bankruptcy, while QFs, forced to sell by virtue of contracts rather than a Federal emergency order, would likely be left with little or no recourse. Some of the cleanest, most environmentally desirable sources of energy would be severely disadvantaged by this action.

While on fairness grounds alone, we believe the Wyden amendment should be defeated, perhaps more importantly, we think the amendment would only worsen the California energy crisis. Creditors have shown remarkable patience to date, giving California state officials an opportunity to seek a solution that avoids utility bankruptcy. This amendment, however, could trigger an immediate bankruptcy filing in order for the filing to precede enactment of the legislation.

I urge you to do everything possible to help your colleagues understand the very negative consequences of this amendment for clean, renewable sources of energy. Thank you for your assistance and please let me know if I can provide you with any additional information.

Sincerely,

JEANNE CONNELLY,
Vice President—Federal Relations.

EDISON ELECTRIC INSTITUTE,
Washington, DC, March 13, 2001.

HON. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to express our concerns regarding a proposed amendment to S. 420, the "Bankruptcy Reform Act of 2001", that may be offered by Senator WYDEN for himself and Senators BAUCUS and MURRAY. While there appear to have been several iterations of that amendment, the thrust appears to favor public power electricity suppliers in a utility bankruptcy proceeding by providing that debts to them for electricity are not dischargeable. The amendment also applies to debts for wholesale electric power received pursuant to the emergency order issued by the Secretary of Energy under section 202(c) of the Federal Power Act. This amendment raises large public policy concerns by affecting all utilities as well as those involved in bankruptcy proceedings.

First, it primarily advantages government-owned utilities who already are uniquely able to sell power at rates which are not subject to regulation by FERC. It makes no sense to give a bankruptcy preference to the only generators whose rates are unregulated.

Second, the amendment appears to have little benefit for generators which are not publicly-owned, even though their rates are fully subject to FERC regulation. Many of these suppliers sold into the California market voluntarily without being compelled to by the DOE order and most of their sales took place both before and after the DOE order was in effect. Thus, most of their sales would not be covered.

Third, the amendment would have long term impacts increasing all utilities' cost of capital by downgrading the protections afforded to lending institutions and investors. Such institutions lent money to California utilities to allow them to continue to provide service to consumers in California despite the retail rate freeze. Legislating reductions in a lender's and an investor's bankruptcy protections may lead investors to increase the cost of capital to all utilities to compensate for the added risk. This would result in higher costs to all consumers. Since significant amounts of new capital are needed to fund necessary expansions of generation and transmission facilities, this would have a negative impact on the entire economy.

Fourth, this amendment would undermine efforts underway to address the current electricity situation in California. All parties, including the Governor, the utilities and creditors, are trying to work out an agreement. Passage (as well as concern about the possible passage) of this amendment could disrupt these efforts and lead to immediate initiation of bankruptcy proceedings.

Finally, this amendment would do nothing to solve the underlying problem that retail rates in California are frozen at a level far below the cost of wholesale power purchases. It does nothing to provide for new supplies of electricity, does nothing to clarify existing provisions of the bankruptcy code which may limit the authority of a bankruptcy judge to increase rates and in effect merely "reshuffles the deck chairs" in the California electricity crisis.

We urge you to vote against the amendment.

Sincerely,

THOMAS R. KUHN.

THE WILLIAMS COMPANIES,
ONE WILLIAMS CENTER,
Tulsa, Oklahoma, March 12, 2001.

Hon. DIANNE FEINSTEIN,
U.S. Senate, 331 Hart Office Building, Wash-
ington, DC.

DEAR SENATOR FEINSTEIN: I understand that Sen. WYDEN may offer an amendment to the bankruptcy legislation before the Senate that would adversely affect the California electricity situation. I understand this amendment would give preferential standing in any bankruptcy proceeding to private or public providers of electricity who were required to sell power pursuant to the Department of Energy orders. That is an illogical outcome when private providers within the state may have provided electricity outside of the DOE order and other creditors may be equally deserving of payment.

Williams is strongly opposed to any such proposal. In our judgement, intervention by Congress in the California market in a way that picks winners and losers among similarly situated parties will only precipitate a deepening of the crisis. It will cripple ongoing efforts within the State to resolve the crisis, and trigger an outpouring of litigation and legal maneuvering that would prolong the crisis, not resolve it.

Williams is a national energy company who has been an active participant in the California market. Williams dispatches as much as 4,000 megawatts of power in the Los Angeles region, although the amount available on any given day may be less, depending on a variety of factors. This represents about 40 percent of the independent generating capacity in the Los Angeles area and about 9 percent of the available in-state generation that is available to the independent system operator.

Restoring financial solvency to the local utilities is a critical element of any long-term solution to the electricity problem in California. If those utilities are forced into bankruptcy the immediate result would be to plunge everyone involved in the crisis into protracted, uncertain court proceedings. In our judgement, this proposed legislation will only serve to precipitate that bankruptcy. I fear the more possibility that such an amendment might become law will leave those involved little choice but to trigger bankruptcy proceedings in order to protect their own interests.

In our view, a far more constructive course is for those involved to work in good faith to find a comprehensive solution to the problem. Congressional encouragement of that approach would be welcome, but partial solutions, especially those that would increase the probability of litigation, should be rejected.

At the end of the day, if recovery efforts do fail and there is the unfortunate outcome of a bankruptcy of one or more of the California utilities, then leaving the existing provisions of law in place will produce the fairest outcome. Adoption of this amendment would create subsets of rights among similarly situated parties with unpredictable and quite possibly inequitable results.

Sincerely,

KEITH E. BAILEY.

TURN,

THE UTILITY REFORM NETWORK,
San Francisco, CA, March 12, 2001.

Re: Wyden-Baucus Amendments to S. 240—
TURN Opposition

SENATOR DIANE FEINSTEIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: This letter is written to express TURN's opposition to the

Wyden-Baucus Amendment to S. 420. The amendment would give preferential treatment to wholesale power generators, who sold electricity into California's severely dysfunctional market. By making debt incurred by utilities for wholesale purchase of electricity non-dischargeable in the event of utility bankruptcy, the legislation would unfairly favor generators at the expense of ratepayers. During the worst part of the energy crisis, wholesale generators, both public and private, realized windfall profits in California. There is no justification to protect 100 percent of these profits at the expense of ratepayers and other creditors. Even power that was dispatched subject to a federal order was sold at prices way in excess of the just and reasonable rates that are required by federal law. Why should Federal legislators protect windfall profits at the expense of other creditors who were loaning money to the utilities to purchase power during the same emergency?

We are afraid that this kind of legislation will harmfully impact whatever negotiations are happening at the state level to strike a balance that would cause all players to make some sort of sacrifice so that we can all move forward. Let the bankruptcy laws remain status quo ante in order to allow the settlement of all claims going forward. The Senate should not modify laws that were in place during this period in order to choose winners or losers in California's energy debacle. Either there will be a settlement at the state level or the utilities will be forced to bankruptcy. If bankruptcy is the eventual solution, let the federal bankruptcy judge, applying the laws that were in place during the crisis, resolve the equities. Senate intervention at this point influences the negotiating dynamics unfairly. Such intervention could actually hasten bankruptcy if other creditors perceive an advantage to forcing early involuntary bankruptcy. This could happen if bankers or commercial paper holders believe they have more opportunity to recover their losses by filing before the effective date of any legislation that could compromise their claims.

Sincerely,

NETTIE HOGE,
Executive Director.

EDISON INTERNATIONAL,
March 12, 2001.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to you to express Edison International's opposition to an amendment from Oregon Senator Ron Wyden to the Bankruptcy Reform Act, S. 420.

As you know, California and the western states have been hard hit by an electricity shortage and dramatic price spikes for the last eight months. Edison has incurred an undercollection of nearly \$5.5 billion procuring wholesale power at prices that greatly exceed retail rates in California. In mid-January, after we ran out of credit and stopped payment on most of our outstanding debt, the state stepped in to pick up the funding shortfall for daily power purchases. The state has spent an additional \$3 billion in electricity purchases so far.

At this moment, California Governor Gray Davis is trying to craft a solution that will get the system working again. Those who hold utility debt, including banks, pension funds, municipalities, retirees and other bondholders, small businesses and electricity generators, have been patient, working with us to avert utility bankruptcy while the

state works to resolve these very difficult issues.

Unfortunately, the Wyden amendment undermines the solution being crafted within the state. The Wyden amendment would require that, in the event of bankruptcy, the power generators who have made significant profits from this crisis receive full payment before small businesses, banks and bondholders. This is not fair to the other creditors.

Furthermore, this amendment could trigger the bankruptcies that everyone is trying to avoid. Other creditors will not stand by and just watch as the amendment takes away their rights.

It is Edison's sincerest hope that a comprehensive solution will be crafted that will allow us to make our creditors whole. The state is currently in the midst of delicate negotiations with generators and utilities. The Wyden amendment should not be allowed to disrupt this process, and we thank you for your efforts to oppose it.

Sincerely,

JOHN E. BRYSON,
Chairman of the Board and Chief Executive
Officer.

PG&E CORPORATION,
San Francisco, CA, March 8, 2001.

DIANNE FEINSTEIN,
U.S. Senate, 331 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: This letter addresses the proposed Wyden amendment which would modify the relationship among creditors in some bankruptcies. We are in opposition to this amendment.

PG&E is at a critical point in sensitive negotiations to resolve an energy crisis that is affecting the Western United States. Our creditors have been willing to forbear in the interest of achieving a comprehensive solution that is fair to all parties. This amendment would change the relationship among creditors and could destabilize the fragile cooperation that currently exists.

It would be a terrible irony if actions of the United States Government were responsible for tipping this situation over the edge.

Sincerely,

ROBERT D. GLYNN,
Chairman, Chief Executive Officer and
President.

ELECTRIC POWER SUPPLY ASSOCIATION,
Washington, DC, March 12, 2001.

Hon. DIANNE FEINSTEIN,
The Senate Committee on Energy and Natural
Resources, Senate Hart Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: The Electric Power Supply Association (EPSA) is the national trade group representing competitive power suppliers, both developers of power projects and marketers of electric energy. Our members are active nationally and include many of the companies that produce and market power for the California wholesale market. Few have a greater stake in the orderly and effective resolution of California's electricity crisis than these companies.

We are writing to express our deep concern and opposition to an amendment that may be offered by Senator Ron Wyden to the bankruptcy legislation now before the Senate. Our fear is that this amendment could precipitate a financial crisis and exacerbate the already precarious situation in the West.

This amendment seeks to give certain entities a favorable status in the event that California utilities fall into bankruptcy. Many companies have provided power to

California's consumers and EPSA believes emphatically that all these entities deserve to be fully and fairly compensated. However, it is inappropriate for the Senate to try and create winners and losers in this desperate situation. Rather than orderly resolution, this legislation could lead to a premature declaration of bankruptcy and the inevitable liquidation of the California electric utilities' assets in a legal free-for-all.

We urge you to oppose the Wyden amendment. EPSA is prepared to assist you in structuring a more effective remedy to the energy and financial crisis in western wholesale electric power markets.

Sincerely,

LYNNE H. CHURCH,
President.

GOVERNORS OFFICE,
STATE CAPITOL,
Sacramento, CA, March 13, 2001.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR DIANE: I want to express my sincere appreciation for your efforts on behalf of California as we work to solve the electricity challenge we inherited.

We have taken immediate steps to build new power plants. Not one major power plant was built during the 12 years before I was elected. Starting in April, 1999, we have approved 9 plants, with 6 plants under construction, and with 3 plants on-line by this summer. Moreover, under my emergency authority, I acted to accelerate and incentive the development of new generation, including distributed generation and peaking facilities, with an aggressive but attainable goal of putting 5000 MW of new power on-line this summer, and another 5000 MW by the summer of 2002.

Today, I announced a major energy conservation initiative, the 20/20 Rebate Program, which will reward consumers with a 20 percent reduction in their summer 2001 electricity bill if they reduce their use by 20 percent or greater. This program will be the centerpiece of \$800 million in energy conservation programs including a \$30 million public education program which features conservation messages in 12 media markets throughout California. The state, itself, has initiated electricity conservation programs which have produced an average savings of 8 percent, increasing to over 20 percent of its use during stage 2 and 3 alerts.

A critical component of the plan to resolve California's energy challenge is the return of our utilities to financial solvency. Our efforts have taken the form of painstaking negotiations between the state and the utilities to stabilize their financial condition. Any attempt to create a special class of debtor under federal bankruptcy laws may have serious repercussions to our efforts.

Therefore, I am writing to express my strong opposition to Senator Ron Wyden's amendment to S. 420, the Bankruptcy Reform Act of 2001. Any actions on the part of the United States Senate might very well undermine all the progress we have made to this point in our negotiations with the utilities. This is a very delicate process and we urge the Senate to allow all parties in California to continue their work together to solve this crisis.

Sincerely,

GRAY DAVIS.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS,
Washington, DC, March 13, 2001.

Hon. DANIEL K. AKAKA,
U.S. Senate, SH-720 Senate Hart Office Building,
Washington, DC.

DEAR SENATOR AKAKA: We understand the Senate will be voting on an amendment to the Bankruptcy Reform Act (S. 240) today, submitted by Oregon Senator RON WYDEN. The International Brotherhood of Electrical Workers (IBEW) has a number of concerns with this amendment and urges your opposition.

The Wyden Amendment would make any debts incurred under a federal order imposed during the power crisis in California non-dischargeable in a bankruptcy proceeding. Inevitably, power suppliers would be given preference above other creditors, pushing workers' interests further down the ladder. This looming threat also adds pressure to bargaining efforts during contract negotiations, putting our members at higher financial risk.

It is understandable that public agencies who supplied power during the crisis want guarantees for their ratepayers, and should, at just and reasonable rates that cover the cost of producing the power. However, privately owned suppliers took part in predatory behavior during the spot market price spikes, selling electricity at 1,000-3,000 percent profit margins. Should these suppliers who inflated their power prices be the priority in a bankruptcy proceeding? Should small bondholders, workers, pension trust funds and other creditors be left to pick up the crumbs?

Governor Gray Davis is working tirelessly to resolve the electricity deregulation disaster in California. We are hoping the state's solution will avert utility bankruptcy and protect workers who could lose their jobs if these delicate negotiations are not successful. We believe the Wyden Amendment could disrupt this fragile process.

On behalf of over 800,000 IBEW members and their working families, we urge you to "OPPOSE" The Wyden Amendment to S. 420.

Sincerely,

EDWIN D. HILL,
International President.

JERRY J. O'CONNOR,
International Secretary-Treasurer.

Mrs. FEINSTEIN. Mr. President, there is also a consumer organization, one that I am familiar with because while I was Mayor of San Francisco I had occasion to work with them. This group is The Utility Reform Network. In their letter they state:

We are afraid this kind of legislation will harmfully impact whatever negotiations are happening at the State level to strike a balance that would cause all players to make some sort of sacrifice so we can all move forward.

I have offered the testimony of the Governor of the State of California, who states that, yes, Senator WYDEN's amendment would interfere with the negotiations that are going on today. The letter goes on to say:

Let the bankruptcy laws remain status quo ante, in order to allow the settlement of all claims going forward. The Senate should not modify laws that were in place during this period, in order to choose winners or losers in California's energy debacle. Either there

will be a settlement at the State level or the utilities will be forced to bankruptcy.

That is certainly correct.

If bankruptcy is the eventual solution, let the Federal bankruptcy judge, applying the laws that were in place during the crisis, resolve the equities.

I could not agree more, Mr. President.

I mentioned that right now the State of California is working diligently to ensure the utilities can make their payments. The State is negotiating to purchase the transmission assets of both of the investor-owned utilities in the State. This will provide an infusion of revenue into the ailing utilities that will enable them to begin to repay their creditors. If this amendment should trigger a run on the bank and generators or banks or other creditors find the only way they can protect their rights is to force a bankruptcy, the State of California will not be able to complete its plan to buy these transmission assets and have the utilities pay their debts.

I am very hopeful this situation will be resolved in short order. The State has already come to preliminary agreements, and these agreements will likely be finalized within the next few months. California's creditors are also hopeful that this process will improve the chances that they will ultimately be repaid for all the debt they have incurred.

I believe the public entities will be repaid. However, let me just say that some in the Northwest have charged that Bonneville Power Administration (BPA) has been forced to drain Federal reservoirs to supply power to California. I want to correct the record because those charges are mistaken.

In December 2000, when the Secretary of Energy, Bill Richardson, issued the emergency order to Western utilities to sell power to California, BPA helped, but it helped in a way that also benefits the Northwest. It was an energy capacity exchange. In other words, they helped California meet their peak loads. And California, by that agreement, sent twice the energy back, using their excess capacity at night. So that helped BPA keep more water in the reservoirs when BPA has stated they really needed it.

I am not critical of Senators WYDEN and SMITH for trying to protect their State. But what I am saying is, I have read almost a dozen letters from debtors and creditors intimately involved in the negotiations, all of whom oppose this. They do so because they believe it may well trigger a bankruptcy.

I have read from the utilities involved—Southern California Edison, Pacific Gas and Electric—who also say, wouldn't it be ironic if the Federal Government were inadvertently to trigger a bankruptcy?

I say to you that to move an amendment such as this at the time of critical negotiations is a huge mistake. I,

for one, do not want to be responsible should it truly trigger both of these large investor-owned utilities to go into bankruptcy.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I want to respond just for a few minutes to my colleague from California. I think she knows I admire her enormously. I think the RECORD will show the distinguished Senator from California and I agree on a vast majority of the issues that come before the Senate.

What is troubling about the argument that is advanced before the Senate tonight is that after State officials in California botched the job of deregulation—by the way, this was not Senator FEINSTEIN; Senator FEINSTEIN did not do that, but State officials in California botched the job—now the message is, the public entities and those responsible to taxpayers are just supposed to trust folks in California to hope everything is going to work out. Given the hardship we are facing in the Pacific Northwest, that is just a little much to swallow; it is hard for this Senator to swallow, despite the fact that I have great respect for my colleague from California.

I think tonight we have seen—certainly over the course of the last hour—that there is a sharp difference of opinion between California's two Senators on this matter. Senator BOXER worked with us in close consultation. She is in support of this amendment. She believes it is going to help bring folks together in the West for a comprehensive solution.

I think what she is saying is she does not want her State to be a scofflaw. She does not want her State to, in effect, be a deadbeat in the course of this whole discussion as the State of California asks the distinguished new Senator from Virginia to be part of an effort—and myself and others—to come up with a comprehensive solution to this question.

The distinguished Senator from California started her presentation by reading from some letters from private utilities in California and, in particular, focused on the fact that Southern California Edison is in opposition to this amendment.

The fact is, the Washington Post noted this recently. Southern California Edison actually passed along nearly \$5 billion in net income to its parent, Edison International, which used the money to pay dividends to its shareholders and to repurchase its own stock.

So what you have is a private company, Edison International, that my colleague cites tonight as the reason the Senator from Virginia and other colleagues should vote against the bipartisan Smith-Wyden amendment because we are individuals who ought to

be concerned about Southern California Edison first.

I want Southern California Edison to get a fair shake. That is why we made very clear in our amendment that no one would get a preference if, in fact, you had the worst case scenario of an actual bankruptcy unfolding in the State of California. I just do not want Southern California Edison and a handful of these private interests to get a free ride. I do not know how it passes the smell test. I think this is why Senator BOXER agrees with us on this matter.

How we can say to the people of the Pacific Northwest, who, in effect, got these glowing thank-you letters from Senator FEINSTEIN, that somehow they are not going to be repaid, even though it involves only a few hundred million dollars, may not be a big deal to Californians, but it is a huge deal to the ratepayers in our area. We are concerned. We always have to make debt repayment to the Federal Government. These sums make a real difference.

So I am very hopeful, as our colleagues overnight reflect on the debate that is being held on the floor of the Senate, that they will stand with Senator SMITH, SENATOR BOXER, and myself rather than with Southern California Edison, which has been busy sending billions of dollars overseas, when all the rest of us on the west coast have been trying to figure out how to get through a very difficult situation.

Mention was made of the fact that this amendment requires out-of-State generators to be paid in full before other creditors are paid. Our amendment does no such thing. It does no such thing. It only deals with a fraction of the debt that is owed by California utilities. It only requires the debt be repaid at the end of a bankruptcy proceeding when a plan of reorganization is put in place. If the worst case scenario takes place, which we believe our legislation helps to avert, then we will have a measure of fairness in the consideration of how to handle that situation.

Senator FEINSTEIN also quoted from out-of-State generators. These are the companies that the Governor of California has called profiteers. Those are not my words; those are the words of the Governor of California.

So I am sure my colleagues, by this point, are awfully confused about the back and forth. But I do think Senator FEINSTEIN has framed the debate well. On one side are the interests of those directly responsible to taxpayers, those who have no shareholders, nobody who can absorb the cost, nobody who can be involved in some kind of sleight-of-hand arrangement where you can send billions of dollars overseas.

The people who are supporting Senator BOXER, Senator SMITH, and myself, and others, do not have those

kinds of shareholders involved in those multibillion-dollar deals that were reported in the Washington Post.

They are standing up for taxpayers. They are the ones who would be helped by this bipartisan amendment. It is very clear, on the basis of the letters that have been read in opposition, that on the other side are the interests of these private utilities.

I ask unanimous consent that the Washington Post article outlining Southern California Edison's program to send \$5 billion overseas be printed in the RECORD.

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

[From the Washington Post, Jan. 31, 2001]
CALIFORNIA'S UTILITY SENT PARENT FIRM \$4.8 BILLION—AUDIT RESULTS ANGER CONSUMER GROUPS

(By William Booth and Rene Sanchez)

LOS ANGELES, Jan. 30—The first of several audits to be released by the state regulators said that one of California's two nearly bankrupt utilities, Southern California Edison, legally passed along nearly \$5 billion in net income to its parent, Edison International, which used the money to pay dividends to its shareholders and to repurchase its own stock.

The audit, released Monday night by the California Public Utilities Commission, also showed that Southern California Edison is now broke and so strapped for cash it cannot keep buying electricity at rates higher than it can pass along to consumers.

The \$4.8 billion was, in part, proceeds from the sale of the Southern California Edison's power plants, which the utility was required to sell under California's 1996 deregulation plan. Deregulation here sought to break up the utility monopolies and open the state up to free-market forces.

Consumer advocates—and some elected officials—reacted angrily to the audit, accusing the utilities of pleading poverty and begging for financial assistance from the state to avoid bankruptcy.

"Basically, they took the money and ran," John Burton, a Democratic leader of the state Senate from San Francisco, told reporters. "Had they not done that they would not be in the financial problem they are in. If ratepayers bail them out, ratepayers should get something in return, like power lines or something."

But officials with the utilities said their critics are playing politics and misinterpreting their books. Tom Higgins, senior vice president at Edison International, said: "There's been no profit, no windfall. This is the recovery of capital investment."

The past profits and current solvency of the state's two struggling utilities are central to California's energy crisis. Most experts agree that the state is suffering from soaring prices and its 15th day of emergency energy rationing because of a failed and dysfunctional deregulatory plan, which allowed wholesale energy prices to soar while capping the rates utility companies could charge consumers. In the past six months, the utilities have gone bust, while wholesale power producers have reaped huge profits.

California is fast running out of time to solve its immediate energy crisis. The state already has used up the first \$400 million in emergency appropriations for electricity purchases. The Legislature is considering

bills to make the state a major buyer of power—and to pass along possible steep increases in costs to consumers. Gov. Gray Davis (D) worked through the weekend trying to hammer out a longer-range plan, but so far the Legislature has passed only emergency measures and decrees—and no long-term solutions.

Higgins, the Edison International executive, said Southern California Edison was required to sell off its plants after deregulation in 1996, and that it did so—mostly to out-of-state companies that are now the wholesale suppliers of California's electricity. The utility sold off its gas and coal-fired plants, but retained its nuclear and hydroelectric facilities.

The money they got from plant sales, Higgins said, went to pay off the banks that loaned them the cash to build the generating stations and to repay investors and shareholders who also put money into plant construction. The transfer of money occurred from 1996 through last November.

"It's like you have a house and mortgage and you sell the house and you recover your initial investment and then pay off the mortgage," Higgins said.

Another audit of Pacific Gas and Electric Co., the other struggling utility, will be released within days. That results are expected to be similar.

"The only reason this would be controversial is that the consumer groups are trying to rewrite history," said John Nelson, a spokesman for PG&E.

Nelson said his utility did the same thing as Southern California Edison—it sold plants, paid off loans and sent the rest to its holding company, PG&E Corp. He would not disclose exactly how much was transferred, but said it is safe to assume a figure of several billion dollars.

Consumer advocates around California, however, said it did not matter that the utilities were returning investments to their shareholders, a practice that no one has asserted is financially improper or illegal. Today, they began lobbying state lawmakers to scrap an emerging legislative plan that would cover much of the utilities' purported debts with billions of dollars in publicly financed bonds.

"This confirms what we've been saying all along," said Matt Freedman, a director of the Utility Reform Network. "Edison is not being straight with the public or the Legislature about the extent of its debt."

Freedman also said that the audit shows that in recent months Edison has been selling some of its own generating power back to itself at high prices on the open market, then claiming both profit and debt.

"It's like a laundering scheme," he said.

Michael Shames of the Utility Consumers Action Network said the audit could significantly influence the fastmoving legislative debate on the state's energy crisis. He said that while it was not illegal for the utilities to transfer money to their parent companies, "the question is, 'Was it prudent?'"

But Paul Hefner, a spokesman for Assembly Speaker Robert Hertzberg (D), said there are no substantive new revelations in the Edison audit and that the Legislature is proceeding with a plan outlined last Friday that would cover much of the utilities' debts in exchange for the state receiving warrants to buy stock in the companies.

"I don't know that it changes the landscape at all," Hefner said, referring to the audits. "All along we've been saying we're not going to do this and get nothing back. We're driving as hard a bargain as we can."

Mr. WYDEN. On the other side of our amendment are exactly those kinds of interests, those kinds of powerful private interests. Various letters have been read into the RECORD tonight. Yes, those who oppose us are utilities that transferred billions of dollars to the shareholders and parent companies and, frankly, don't seem to think that there is anything wrong with doing that while stiffing Bonneville Power, the western power administration, itty-bitty municipal utilities, and others.

The reason we have been able to put this bipartisan amendment together is that we have fashioned a narrow approach to ensure that these public entities get a fair shake. We have fashioned an approach that is not going to put in peril a comprehensive effort in the State of California to deal with this power situation. In fact, we believe that it will create incentives to actually bring parties together and to avert the kind of doomsday scenario that all of us in the Senate want to prevent.

The lines are drawn very well. On one side you have Senator SMITH and Senator BOXER and myself, and on the other side you have Southern California Edison and those representing a handful of multibillion-dollar private interests that were intimately involved in creating this problem in the first place.

I don't think the Senate ought to be asked, in effect by those who botched the job at the State level several years ago, to just trust them. We ought to take a practical step such as this that is going to bring the parties together.

Senator FEINSTEIN said: Well, this is without precedent. The fact is, the botched job that California did on energy deregulation is what is without precedent. If we are going to talk about setting precedents this evening, what we ought to talk about is the fact that in the State of Virginia they didn't go about the task of deregulating energy this way. Certainly, we didn't do it that way in my State. We believe in markets. We don't believe in saying, well, you can do one thing for wholesale and another thing for retail, but if everything doesn't work out, come to the Senate and if somebody tries to make sure you get a fair shake when you are sending power under Federal order, we will fight it.

We don't say things such as that. We say you have to be fair to all parties. That is why I am particularly pleased to have the support of Senator SMITH and Senator BOXER.

Mr. REID. Mr. President, I ask unanimous consent that the votes occur with respect to the Carnahan amendment No. 40 and the Smith of Oregon amendment No. 95, and the Wyden amendment No. 78, as amended, if amended, and the Wellstone amendment No. 36, as modified, at no later than 10:40 a.m. and that at 10:30 a.m. on

Wednesday, Senator WELLSTONE be recognized for up to 10 minutes to be followed by the stacked votes as provided in the earlier agreement.

I further ask unanimous consent that Senator BINGAMAN, prior to the vote on the Wyden amendment, be recognized himself for 10 minutes.

Mr. WYDEN. Reserving the right to object for the purpose of asking my colleague a question, I want to make sure I understand my colleague. The first vote on the amendment involving this matter with Pacific Northwest and California would be on the Smith of Oregon perfecting amendment; is that correct?

Mr. REID. The Senator is correct.

Mr. WYDEN. I appreciate that.

Mr. GRASSLEY. Reserving the right to object—

Mr. REID. If I could say to my friend, it was just brought to my attention that there could be some parliamentary move, for example, to table the Smith amendment and that, of course, would not be in keeping with what the Senator just said. The intent is to have a vote on or in relation to the Smith amendment first. That would be the regular order.

Mr. WYDEN. I did not understand the comments of my distinguished colleague.

Mr. REID. In relation to the question asked by the Senator from Oregon, the Smith amendment is the first amendment that will be called up. Someone could move to table that amendment. I am sure the Senator understood that.

Mr. WYDEN. I understand that.

Mr. REID. We will vote on or in relation to the Smith amendment first.

Mr. WYDEN. I thank my colleague.

Mr. GRASSLEY. Reserving the right to object, we have an objection to part of this on our side, that the Wellstone amendment not be taken up because we don't have the modification yet.

Mr. REID. I say to my friend from Iowa, the modification has been prepared. 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. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the votes occur with respect to the Carnahan amendment, No. 40, and the Smith of Oregon amendment, No. 95, and the Wyden amendment, No. 78, as amended, at approximately 10:45 a.m. on Wednesday, and that following the votes, the Senate resume consideration of the Wellstone amendment, No. 36.

I further ask consent that at 10:30 a.m. Senator BINGAMAN be recognized for up to 10 minutes for debate and

Senator HAGEL be recognized to speak for up to 5 minutes.

I further ask consent that no second-degree amendments be in order to any of the above-listed amendments, where applicable, and there be up to 5 minutes prior to each vote for explanation.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, this has been a long, arduous task. I appreciate the Senator from Oregon being so patient throughout the day. But there are two Senators who came here, Senators DURBIN and BREAUX, who have filed amendments in a timely fashion. There are 10 other amendments at the desk. Before I agree to this, I want these amendments just to be called up. It doesn't give them a right to vote or anything, except it is in the stack of these amendments.

These two gentlemen were here tonight and waited. I told them I would offer the amendments for them. I ask unanimous consent that I be allowed to call those two amendments up, No. 93 and No. 94.

The PRESIDING OFFICER. Is there objection to the request proposed by the Senator from Nevada?

Without objection, it is so ordered.

AMENDMENTS NOS. 93 AND 94

The PRESIDING OFFICER. The clerk will report the amendments. The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DURBIN, proposes an amendment numbered 93.

The Senator from Nevada [Mr. REID], for Mr. BREAUX, for himself, Mr. SPECTER, Mrs. LINCOLN, Mr. JOHNSON, Ms. LANDRIEU, Mr. CLELAND, Mrs. FEINSTEIN, and Mr. NELSON of Nebraska, proposes an amendment numbered 94.

The amendments are as follows:

(The text of amendment No. 93 is printed in today's RECORD under "Amendments Submitted.")

AMENDMENT NO. 94

(Purpose: To provide for the reissuance of a rule relating to ergonomics)

At the appropriate place, insert the following:

SEC. ____ AUTHORITY TO ISSUE A RULE RELATING TO ERGONOMICS.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Academy of Sciences issued a report entitled "Musculoskeletal Disorders and the Workplace—Low Back and Upper Extremities" on January 18, 2001. The report was issued after the Occupational Safety and Health Administration promulgated a final rule relating to ergonomics (published at 65 Fed. Reg. 68261 (2000)).

(2) According to the National Academy of Sciences, musculoskeletal disorders of the low back and upper extremities are an important and costly national health problem. An estimated 1,000,000 workers each year lose time from work as a result of work-related musculoskeletal disorders.

(3) Conservative estimates of the economic burden imposed by work-related musculoskeletal disorders, as measured by compensation costs, lost wages, and lost produc-

tivity, are between \$45,000,000,000 and \$54,000,000,000 annually.

(4) Congress enacted the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions," and charged the Secretary of Labor with implementing the Act to accomplish this purpose.

(5) Promulgation of a standard on workplace ergonomics is needed to address a serious workplace safety and health problem and to protect working men and women from work-related musculoskeletal disorders. Any workplace ergonomics standard should take into account the cost and feasibility of compliance with such requirements and the sound science of the National Academy of Sciences report.

(b) AUTHORITY TO ISSUE RULE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 2 years after the date of enactment of this Act, the Secretary of Labor shall, in accordance with section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), issue a final rule relating to ergonomics. The standard under the final rule shall take effect not later than 90 days after the date on which the rule is promulgated. The standard shall—

(A) address work-related musculoskeletal disorders and workplace ergonomic hazards;

(B) not apply to non-work-related musculoskeletal disorders that occur outside the workplace or non-work-related musculoskeletal disorders that are aggravated by work; and

(C) set forth in clear terms—

(i) the circumstances under which an employer is required to take action to address ergonomic hazards;

(ii) the measures required of an employer under the standard; and

(iii) the compliance obligations of an employer under the standard.

(2) AUTHORIZATION.—Paragraph (1) shall be considered a specific authorization by Congress in accordance with section 801(b)(2) of title 5, United States Code, with respect to the issuance of a new ergonomic rule.

(3) PROHIBITION.—In issuing a new rule under this subsection, the Secretary of Labor shall ensure that nothing in the rule expands the application of State workers' compensation laws.

(4) STANDARD SETTING AUTHORITY.—Nothing in this subsection shall be construed to restrict or alter the authority of the Secretary of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to adopt health or safety standards (as defined in section 3(8) (29 U.S.C. 652(8)) of such Act) for other hazards pursuant to section 6 (29 U.S.C. 655) of such Act.

(5) INFORMATION AND TRAINING MATERIALS.—The Secretary of Labor shall, prior to the date on which the new rule under this subsection becomes effective, develop information and training materials, and implement an outreach program and other initiatives, to provide compliance assistance to employers and employees concerning the new rule and the requirements under the rule.

AMENDMENT NO. 36, AS MODIFIED

Mr. REID. Mr. President, the majority has received the modified Wellstone amendment. I ask that his amendment be modified at this time.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment (No. 36), as modified, is as follows:

(Purpose: To disallow certain claims and prohibit coercive debt collection practices)

At the end of subtitle A of title II, add the following:

SEC. 204. DISALLOWANCE OF CERTAIN CLAIMS.

IN GENERAL.—Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking "or" at the end;

(2) in paragraph (9), by striking the period at the end and inserting "or"; and

(3) by adding at the end of the following:

"(10) such claim arises from a transaction—

"(A) that is—

"(i) a consumer credit transaction;

"(ii) a transaction, for a fee—

"(I) in which the deposit of a personal check is deferred; or

"(II) that consists of a credit and a right to a future debit to a personal deposit account; or

"(iii) a transaction secured by a motor vehicle or the title to a motor vehicle; and

"(B) in which the annual percentage rate (as determined in accordance with section 107 of the Truth in Lending Act) exceeds 100 percent."

AMENDMENT NO. 78

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I reclaim my time briefly to make a few additional points on the matter of the California utilities and the Pacific Northwest getting repaid for the funds it sent California during their period of critical blackouts and other problems this winter.

I agree completely with those Senators who have spoken tonight, that it is in everyone's interest to come up with an approach that avoids bankruptcy. I think that is an area of widespread agreement. Senator SMITH and I repeatedly have said to Senator FEINSTEIN and others who have had reservations about our approach that we would be open to a wide variety of avenues in order to make sure our constituents get a fair shake and are repaid.

For example, I would be happy this evening, or at another appropriate time before the vote, to accept a perfecting amendment that would give California a reasonable period of time to perfect this comprehensive approach that they are pursuing in order to make sure everyone is paid off. I think that is very reasonable, and I want to make it clear that Senator SMITH and I have talked about that in discussions with various utilities, and a couple that oppose it. We made it clear we are open to giving California a reasonable period of time to put their agreement together.

But, in effect, what these California utilities have said is that it is basically our way or the highway. That just doesn't pass the smell test in the Pacific Northwest and with these public entities that are having so much difficulty paying their bills. I wish just a few of those thank-you letters we got from California public officials had been accompanied by checks because

the fact is that all over the State we are getting and have gotten these letters from California public officials thanking us, and now tonight we are hearing that we will be repaid for our good deeds by being told that we can't even get a fair shake in a bankruptcy proceeding.

So this is unprecedented, Mr. President. There is no question about that. I am happy to yield to my colleague in a second because she has said, correctly so, that this is an unprecedented situation. But what I believe is unprecedented is that after State officials have botched the job, they would have the chutzpah to say to my constituents, just trust us; we hope everything works out.

I am happy to yield to my colleague from California.

Mrs. FEINSTEIN. If I may say to the distinguished Senator from Oregon, the point I don't understand is why you feel you won't be paid, why you feel you have to move ahead with this when everyone involved believes that moving ahead with it precipitates them to take action to force a bankruptcy, and if a bankruptcy is forced, it is chapter 7, where the company is dissolved and no one gets paid. That is my problem with this. This is why I believe it is so counterproductive.

Mr. WYDEN. I say to my colleague that we are being asked to trust the people who essentially botched the job. And I look at Southern California Edison—my distinguished colleague read something from the Southern California Edison, and I opened my Washington Post recently and learned that the Southern California Edison sent \$5 billion overseas.

I have great respect for my colleague from California. I don't think she would have put together what California did in the first place. Where we disagree is that I cannot come to the floor of the Senate tonight and say that because I am fond of my colleague from California, California can, in effect, declare bankruptcy and not pay its bills. The Senator's colleague from California, Senator BOXER, said—I think very eloquently—she thought it was just plain fair. That is the way I see it.

I think you are going to have important legislation come before the committee involving rate caps and other approaches. I am going to be working closely with you on those kinds of issues, and Senator SMITH is as well. But if we now get stiffed, and if we are now told we can't even stand in line in a chapter 11 bankruptcy proceeding under a plan, I don't think that passes the basic test of fairness.

That is why we are here tonight. The Senator has framed the issue on her side—Southern California Edison and several of those significant private parties who were intimately involved in botching this job. On our side: Senator

BOXER, Senator SMITH, and a variety of public entities who believe that, coming out of the chapter 11 bankruptcy proceeding, you ought to have something—something—that says you are going to get repaid.

I ask my colleague again tonight, if she were to offer a perfecting amendment to the one we discussed tonight saying we will give you a reasonable period of time to work out your plan, that is yet another olive branch which we have been trying to extend over the last couple of weeks that might allow the Senate to go forward and approve a measure of protection for my constituents while at the same time showing that I and other Westerners are going to bend over backwards to give you all a chance to put together your comprehensive approach.

Mrs. FEINSTEIN. May I respond?

Mr. WYDEN. Of course.

Mrs. FEINSTEIN. I appreciate that. I appreciate the Senator from Oregon saying he may postpone his amendment to give the State of California a chance to go forward with its comprehensive remedies. We do have to wait and see.

Mr. WYDEN. If I may reclaim my time, what I am saying is we will add language to the amendment that says the State of California would get a reasonable period of time to work out this comprehensive approach you have pushed for before any of this kicked in, before anything kicked in that would say the people of the Northwest at some point would get repaid.

Senator SMITH and I will go yet another mile to accommodate the constituents of the Senator from California and say let's pick a reasonable period of time. You all work to put together your agreement. We will work cooperatively with you, and if you accept that change, we can let the Senate go home before breakfast time tomorrow morning and let it get about its business.

Mrs. FEINSTEIN. If I may respond to the offer of the Senator from Oregon, I will be happy to take a look at it. The problem I have with it is that it does not stop what I am concerned about, which is a run on the bank; that as soon as creditors find there is an amendment in the bankruptcy legislation which gives a preference to a certain class of creditors, they then have to exercise their right and ultimately the utility companies will be driven to bankruptcy.

I did not enter this letter into the RECORD. The American Gas Association just put it the way it is. I do not know whether the time solution proposed by the Senator from Oregon solves this, but "By creating a preferred class of creditors," which your amendment does, "in effect the nonpreferred creditors would initiate involuntary bankruptcy proceedings against the utility. As the preferred creditors"—those are

your entities—"would in actuality control the bankruptcy proceedings through their status, in effect chapter 11 reorganization would not be an option. Liquidation of assets through chapter 7 would result."

That is what I am trying to avoid. No matter what you do, you create this situation of preferred versus nonpreferred so the nonpreferred exert their rights now and throw the situation into bankruptcy.

This is not me saying it, this is the president and CEO of the American Gas Association saying that is what would happen.

I do not know whether a time delay solves that basic problem.

Mr. WYDEN. If my colleague will let me reclaim my time, again, there is absolutely nothing in the four corners of this amendment that would give a preference to Bonneville Power and the other public entities involved. The fact is Bonneville and the other public entities would not get priority over claims of secured creditors, for example, because my colleague has been speaking about creditors and the utilities tonight, and Bonneville gets no preference.

All we are saying is that coming out of bankruptcy, there has to be a plan to pay back government agencies. It does not say there has to be a plan to give the people of the Pacific Northwest first crack. It does not say there has to be a plan making Bonneville, again, a preferred creditor. It just says there must be a piece of paper that makes sure the people to whom you sent that thank-you letter, that really gracious thank-you letter where you thanked them in all capital letters—you said, "Thank you, Pacific Northwest"—all we are saying is that at some point those people you said thank you to should have something that would indicate they are not going to get stiffed but will eventually get paid back.

I hope overnight our staffs can work together on this point. You are right; we do have a philosophical difference, and it was expressed by Senator BOXER. Senator BOXER said she did not want the people of her State, good and caring people—my colleague knows I went to Stanford, so I know something about her State—she did not want the people of her State to be essentially scroflaws and not pay their bills.

If I may engage my colleague briefly, I want to make clear that overnight we are anxious to work with you on, for example, the idea of giving you a reasonable period of time before this legislation would kick in, and perhaps my colleague has other ideas because over the last couple of weeks we have made it clear that we want to work with her on this.

Senator BOXER made the point, and correctly so, that on the west coast ours is a power system that is interconnected. It is a grid that serves the

people of the West. There is a tangible reason for us to work together.

It does not create much confidence, nor build a lot of credibility, for us to come to the floor of the Senate and say: Southern California Edison, which sent \$5 billion overseas is against what Senator SMITH, Senator BOXER, and I want to do, and the people of the Pacific Northwest ought to trust them and others who botched the job in the first place to let it all work out.

Mrs. FEINSTEIN. Will the Senator yield for a question?

Mr. WYDEN. Of course.

Mrs. FEINSTEIN. If you put a time date in this, why wouldn't that encourage certain creditors to beat that date and push into bankruptcy ahead of that deadline? This is what every bankruptcy attorney with whom I have talked—and I have it right here:

The inclusion of an effective date may not reduce the likelihood that non-covered creditors would rush the bankruptcy process, but rather could heighten and accelerate that risk because the affected parties will perceive a need to beat the legislative clock while simultaneously trying to amend the legislation.

Mr. WYDEN. If my colleague will allow me to reclaim my time to respond, that is not my first choice. My first choice was what we did with Senator BOXER. Senator BOXER worked very closely with us to narrow this amendment. In order to make sure we had the best possible response with respect to this threat that there could be a great run on the banks and the institutions of California, we narrowed this so it involves a few hundred million dollars out of \$12 billion. In fact, there is a little irony here. The sum of money we are talking about all told is less than the Senator's staff initially indicated they could go along with, but I gather Southern California Edison and some of these other folks do not happen to agree.

Our first choice is to have a very narrow amendment to make sure the people whom California public officials have been thanking get a fair shake. It is only because we are anxious to explore other options with you that we thought giving you a reasonable period of time might be helpful.

We are prepared to take the consequences of an up-or-down vote on the Smith amendment. The choices are clear: Southern California Edison is not with the Smith-Boxer-Wyden amendment. We have established that. It has been read in letters tonight.

Those who are with us are these small public entities—the Western Power Authority, Bonneville Power, small municipal utilities in California. They are with us. It sets a very bad precedent to say those organizations that are responsible to taxpayers can be stiffed through the bankruptcy process.

I admire greatly my colleague from California who is here in this discus-

sion tonight. I make it clear we are prepared to stay until all hours of the night toiling on this matter because one issue we both agree on is this is of enormous interest to our constituents—those you represent in California, those I represent in the Pacific Northwest. We have our door open to work with the Senator on other approaches.

If that doesn't work, the choice is clear for colleagues tomorrow morning at 10:30. Senator SMITH, Senator BOXER, and I have an approach that is narrow and we think will promote negotiations to avoid a bankruptcy proceeding. On the other side is Southern California Edison and a crowd shipping billions of dollars overseas when they ought to do their homework to correct a botched job in energy deregulation on the west coast in California.

If my colleague from California wants to go back and forth some more tonight, we can do that. I have, with Senator BOXER and Senator SMITH, made the principal points on our side, and unless my colleague from California wants to engage in further discussion, we can yield back, but I can't yield my time until we have had a chance to respond to any arguments the Senator has.

Mrs. FEINSTEIN. Mr. President, I will set the record straight. This is not just Southern California Edison or PG&E. There is virtually no creditor or debtor that is in support of the Wyden amendment. Not even the Bonneville Power Administration has written a letter in support of this amendment. There is a reason why they are not in support of this amendment. Once you create a preferred class of creditors, you prompt the breaking of the dam and other creditors will force an involuntary bankruptcy.

If that happens, it is the wrong chapter. It is chapter 7. It is disillusion. It means the utilities get out of the business of distributing power.

This is why this amendment is so dangerous. If the Senator can show me some of these authorities that think this kind of change of bankruptcy law in the middle of what is an extraordinarily precarious situation is a good thing, I may relent.

I have introduced about a dozen letters, not just from Southern California Edison but from creditors, big and small. One of the rumors on the street is that many of the renewable power generators—the wind and solar generating firms for example—are most concerned and would therefore press bankruptcy should this amendment pass.

To get involved in the State's healing process is extraordinarily dangerous. That is my argument. I am not sure simply extending the time obviates the argument I am making. I have virtually every one of these letters that say in so many words, don't force them to exercise their rights to push these

companies into bankruptcy. That is what this amendment does.

I find it very hard when my distinguished colleague says it is just one utility advocating against his amendment. It is not. It is the big generators, the small generators, it is virtually everybody involved in this situation who says, let us try to work it out with the State. Let the State buy these transmission lines. That will inject billions to pay creditors.

If you vitiate or abrogate it by creating a preferred class of creditor, you will encourage other creditors to push for bankruptcy. There are literary hundreds of creditors, huge banks, small banks.

I understand the Senator is trying to do something for his State. I understand that. It is incomprehensible to me to think the Bonneville Power Administration isn't going to get paid back. I believe they will. I believe if you amend bankruptcy law to provide for it, you simply cause a reaction from the other creditors that I think can be devastating.

That is the sum and substance of my argument. I have tried to indicate that with a large number of letters. I regret if anyone thinks this is just one utility advocating against this amendment. It is not. It is virtually the entire creditor community.

Mr. WYDEN. Mr. President, again to set the record straight, when my colleague came to the floor tonight, the first thing she said was, what do the two private utilities affected by this think?

That is clearly what this debate is all about in terms of those who are opposed. Yes, Southern California Edison and PG&E are opposed. The crowd who botched the job of energy deregulation, the State of California, is prepared to oppose something such as this. My colleague from California said this is a dangerous amendment. What is really dangerous is what California has already done to the American people because the fact is, what California has already done to the American people is put in a set of energy decisions that have great implications for the whole country, not just those in the West.

The President of the Senate is from Nevada; I am from Oregon. It will have ripples all the way through our country. That is what California has already done.

The crowd that has botched this and engaged in this conduct, by my calculation, is pretty close to political malpractice if you look at how they went about deregulating energy, deregulating only one part in one way, leaving another part alone. Now they come to the floor of the Senate and they say, trust us even though they have already been dickering about it for months and months; we are going to be able to put together a \$12 billion comprehensive settlement. But you in

the Pacific Northwest and the public entities that Senator BOXER talked about, despite the fact that these organizations involve just a few hundred million dollars as part of a \$12 billion plan, trust us because everything will work out in the end.

That is a bit too much to swallow. Tomorrow when we vote—and we are open to working with our colleague from California this evening—I hope the Senate will stand with Senator SMITH, Senator BOXER, and myself. We are of the view that our amendment is about simple, basic fairness. Nobody is given a preference in bankruptcy under this legislation. In fact, no one in the course of this debate that has gone on now for several hours has once pointed to any language in the amendment that provides a preference to Bonneville or anyone else.

I wrap up by way of saying I will assume my colleague from California misspoke. The Bonneville Power Administration is for this. We have been working with them constantly. The Northwest Power Planning Council is for this. Bonneville Power, for example, is faced with a situation where they will have to make debt repayment before long.

They badly need this money. So this is about the small public entities in California that Senator BOXER spoke about. It is about the municipal energy entities all up and down the west coast. You bet southern California is against us on this. I hope my colleagues will stand with Senator BOXER and Senator SMITH and I at 10:30.

I will again invite my colleague to discuss this further. I will respond to any other arguments. Whenever she finishes, perhaps I can make my closing arguments and we can wrap this up.

Would my colleague like me to yield to her?

Mrs. FEINSTEIN. I would like to respond.

Mr. WYDEN. Would you like me to yield or do you wish your own time?

Mrs. FEINSTEIN. I don't believe there is a time agreement. If the Senator has concluded his remarks, I would like an opportunity to conclude mine.

Mr. WYDEN. I have.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, a lot has been said tonight. Let me express what did happen.

In 1996, the State of California passed a deregulation law. Republicans and Democrats voted for that law. A Republican Governor signed the law. The law was badly flawed. It essentially deregulated the wholesale end of power and kept regulated the retail end. That was a mistake.

Additionally, it provided that 95 percent of the power of California would have to be bought on the spot or day-ahead market. It prevented the bilat-

eral, long-term contracts which are a key part of the solution for California. And the flawed deregulation plan said that California had to buy power through something called a power exchange, which actually guaranteed a higher price for power. And the plan said that the utilities which had generation facilities would have to divest themselves of those generation facilities.

The law was a gamble. It gambled that spot power would be cheaper to buy than the price of bilateral contracts. In fact, that was not the case. There was not enough power supply to meet the demand, so the spot power prices rose dramatically.

I am one who strongly believes that you have to fix the marketplace; that you cannot deregulate on the wholesale end and not also deregulate on the retail end. Possible solutions include establishing a baseline rate, or realtime pricing, or tiered pricing, or something else. These possibilities would create an incentive for conservation and, in the long term, corrects the flawed power market.

The remedies before the State are slightly different than the way I would have gone. It does not mean it is better or worse, but it is a different way. Up to this point, the State has spent \$3.9 billion in buying power. The State of California is willing to authorize funds to buy the transmission lines to enable the utilities to then secure their debt.

It is very easy to point fingers. It is very easy to castigate. It is very easy to call the State a lot of names. Nonetheless, I think the State should have the opportunity to work this situation out.

There is the rub. This amendment does not basically allow that because either advertently or inadvertently, it creates a situation to which others will respond by driving the utility companies to bankruptcy.

Let there be no doubt—in my mind there is no doubt—that others will respond to this situation by pushing these companies into bankruptcy. If they have to go into bankruptcy, they are not going to go into 11 or 13 to repay the debt. They are going to go into 7 to dissolve the debt and simply get out of the business of power distribution. So I am afraid that Senator WYDEN, Senator SMITH, and even my colleague from the State of California, Senator BOXER—I am afraid this is going to be counterproductive and it is going to produce something which can be devastating to everyone.

If it were just me alone who said that, I would be too timid to stand up here and say that. I am joined by virtually all of the debtor and creditor community in saying it. I am even joined by some of the public utilities that Senator WYDEN seeks to protect. The largest city in the State, Los Angeles, which produces its own power,

does not support this because the city is worried about the same thing I am worried about.

I say give the State the time. Senator WYDEN and I do appreciate this—says, all right, we will work with you to create a time. I would like an opportunity to see if that is possible without launching the assault on bankruptcy that I am afraid will come out of the passage of the Wyden-Smith amendment.

I represent the sixth largest economic power on Earth. If these utilities go into bankruptcy, as Senator MURKOWSKI pointed out, it impacts hundreds of thousands of investors who have invested in the utilities, public retirement funds, other companies as well. It creates a situation which I think will have a major negative economic impact throughout the rest of the United States.

If the State were not assiduously trying to work out this problem, I wouldn't feel so strongly. If there was nothing being done to solve the problem, I wouldn't feel so strongly. But two utilities have agreed with the State on terms to purchase the transmission lines. Therefore, when the remainder of that purchase is completed, there will be the money available to pay Bonneville, to pay the Western Power Association, to pay the cogenerators, to pay other generators, to pay the natural gas suppliers. And I hope in the securitization of the back debt, the banks, the large New York banks will also feel that the arrangements are in place to see that they will get paid back. Bankruptcy, I do not believe, will solve this problem.

The degree to which this amendment would push these companies into bankruptcy, I think, is a gamble that is very unwise to take at this time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I will be brief, but I want to just respond to several of the arguments made by my distinguished colleague. My colleague said, for example, that this is going to have real ramifications for the economic well-being of her State. The fact is, what the State of California has already done has already had a major economic impact on my State and on the people of the Pacific Northwest. Under very difficult circumstances we sent additional power to California which generated these glowing thank-you notes from my colleagues and various California public officials.

So my colleague from California envisages some economic trouble in her State. We are already seeing it and it is compounded by the fact that we have been more than a good neighbor. What it is all about on the west coast, as my colleague from Nevada knows, is we have an interconnected power system. We have been more than a good neighbor, and we are suffering economic hardship as a result.

My colleague also said that California is owed the opportunity. Those were her words: The State of California is owed the opportunity to work out this matter.

There is no question in my mind that they should have the opportunity to work it out. But they should not get a free ride. They should have to be part of an effort, as Senator BOXER said this evening, to bring the parties together as we have sought to do with our very narrow amendment we offered this evening.

Finally, my colleague says that somehow the amendment put together by Senator SMITH and Senator BOXER and I, in her words, has launched an assault on the State of California.

That is pretty incendiary oratory, in terms of this whole debate. But, again, I submit if there has been an assault that has been launched, it was what was done in the State of California. It was not something that came about because the Senators from Oregon, working with the Senator from California, tried to figure out a way to make sure there was a modest measure of protection for our constituents. It is not a proposal that moved Bonneville Power to the head of the line, not a proposal that gives our constituents a free ride, the way Southern California Edison seems to want, but something that ensures that we do get a fair shake.

I am very hopeful my colleagues will see that there has been an effort on the part of the sponsors of this particular amendment. The first vote will be on the Smith amendment tomorrow morning at 10:30 or thereabouts. It is an amendment that was perfected by Senator BOXER so as to ensure that this would not create a greater opportunity for bankruptcy to take place.

It was designed to make sure that the parties had a reason to negotiate. I fear that if this particular proposal goes down, this gives a green light to the private interests that are opposing this tonight, to know they basically got the votes on the floor of the Senate to work their will on any of these major issues.

This is going to be a big vote, it seems to me. It is important for us in the Pacific Northwest. But for anybody who reads the Washington Post—and I put the article in the RECORD—the people who are opposing this amendment are folks who are sending billions of dollars overseas rather than trying to take care of business here at home.

The lines are drawn with respect to who is with us and who is not. Those who are responsible to taxpayers and have to make Treasury payments in small California municipal utilities are with us. This is about one proposition, and one proposition only, and that is basic fairness for all concerned in dealing with a difficult issue.

I urge my colleagues to vote in favor of the Smith amendment that will come up in the morning.

Mr. President, I yield the floor.

AMENDMENT NO. 27, AS MODIFIED

Mr. DORGAN. Mr. President, earlier today I voted to table an amendment that had been offered by Senator FEINSTEIN regarding credit cards for young adults. This amendment would have required a \$2,500 cap on credit card limits to anyone under the age of 21 unless they have a signature from their parent or can provide financial documents that establish their independent means of repaying their bills. I opposed this amendment because I am concerned that the age limit is arbitrary and could be unfair to many hard working Americans.

I understand the concern that has been raised by many regarding credit card companies that blanket college campuses with brochures and solicitations. I agree that credit card companies have some responsibility in limiting credit to those who have no income. But I believe that the amendment that was offered today was not a good way to solve that problem.

There are many people who are still in school at age 21. But there are many more who are holding down full time jobs, working to start a family, and deserve to have financial tools available to them, including credit cards without artificial credit limits. A 19-year-old North Dakotan can vote, serve in the military, and is considered an adult under state and federal laws. This amendment would create new hoops for that young person to access a credit card with a limit over \$2,500. This is not a fair approach and is not an appropriate solution to the problem that the amendment's supporters are trying to solve.

Credit card companies have a role to play as we reform bankruptcy laws. They should be held accountable for offering credit responsibly. But this amendment missed its mark. A person under the age of 21 should be able to have and use credit cards if they are working and have an income. For this reason, I opposed the amendment and supported the motion to table.

Mr. BYRD. Mr. President, today I voted in favor of Mrs. FEINSTEIN's amendment to the bankruptcy reform bill that would limit the amount of credit that credit card companies can extend to underage consumers. For the benefit of my West Virginia constituents, I offer a brief explanation of my vote.

I supported the Feinstein amendment because I agree with the general philosophy behind it. Credit card companies are far too willing to offer credit cards to young, financially-inexperienced consumers. Many of these young consumers are college students without any income or credit history. Too often these young consumers get in over their head when credit card companies offer unlimited credit to buy whatever they want, whenever they want. The

Feinstein amendment is a common-sense approach that would restrict the amount of credit that could be offered to these young consumers, unless they gain parental approval or are able to demonstrate their financial independence.

However, I disagree that \$2,500 is an adequate credit limit for protecting underage consumers. My own view is that this amount is too high. I would prefer to see a \$500 credit limit. Even with a credit limit of \$2,500, young consumers are at risk of accumulating massive credit card debt without the ability to repay it. A smaller credit card limit is more likely to reduce this risk.

My hope is that, even though the Senate rejected this amendment, credit card companies will take it upon themselves to more carefully scrutinize to whom they are extending credit, and reign in their credit offers when necessary.

Mr. INHOFE. Mr. President, this morning the Senate briefly debated and tabled the Feinstein amendment No. 27 to S. 420, the bankruptcy reform bill. I was unable to make that vote this morning, but I did want to make a brief statement for the record to register my opposition to the amendment. Under the Feinstein amendment, credit card companies would be forced to limit the debt a minor can carry on a credit card to \$2,500, unless the minor demonstrates a means to pay back the debt or a parent cosigns for the debt. I oppose this amendment as unnecessary government intervention in the marketplace. Washington has no place in limiting or determining the financial needs of students and their ability to repay loans. The government has an abysmal track record when it meddles in the marketplace, and I strongly believe that these decisions should be made by individuals and families, not by the federal government.

FINANCIAL PRIVACY

Mr. LEAHY. Mr. President, I planned to offer an amendment to this bankruptcy bill to protect financial privacy and prevent identity theft in electronic bankruptcy court records. I thank Senators SARBANES, HARKIN, SCHUMER, and ROCKEFELLER for agreeing to cosponsor this amendment.

This amendment addressed just a single area where the Federal Government, here, the Bankruptcy Courts, holds significant amounts of highly personal information, which is freely available for any person for any reason to access and use. The manner in which all three branches of the Federal Government, the Federal agencies, the Congress and the Judiciary, protect the privacy of personal information that Americans are required to divulge to the government, is an important area that needs our attention. I thank the Chairman of the Judiciary Committee

for agreeing to work with me on addressing the problem in a more comprehensive manner.

Mr. HATCH. My distinguished colleague makes a good point, and one where we both agree on, and frankly, it is something on which there is bipartisan interest. The issue of privacy, both online and offline, is something that we have discussed together and both agree that the Committee should examine, and will be examining, the current legal framework for privacy protection and determine where improvements can and should be made. This is an important matter on which we have agreed to hold hearings and move forward with legislative proposals, where appropriate.

Mr. LEAHY. While much attention has been focused on online privacy and the use of personally identifiable information by commercial web sites, the Federal Government is a huge repository of personal information in both paper and electronic form. Balancing the important interests of public access to government records with privacy protection for personal information is not always easy to do.

Mr. HATCH. I agree, this is a difficult subject, but one we must tackle and I believe as policy-makers, Congress has an important role to play in making sure this balance is done properly. It is becoming increasingly more important as we see government using technology to become more efficient, more user friendly, and we need to be sure that the new ease of use of government resources do not compromise the citizenry's privacy expectations.

Mr. LEAHY. The federal judiciary is grappling with the issue of how to put additional court filings online while providing appropriate levels of privacy protection and security for the information in those records. Bankruptcy records, for example, contain all kinds of highly sensitive personal and financial information, including social security, bank and credit card account numbers; medical history; and child support and alimony information. This information may pertain to the debtor but also to many other people who are creditors or simply associated or employed by the debtor. These records have traditionally been available to the public for perusal by individuals who went to the court house, requested the records, and physically reviewed the hard copies. This was an open process, but it was cumbersome. The inefficiency of obtaining data provided its own protective shield. For the most part, only those with a legitimate interest in bankruptcy court data took the trouble to collect it.

As courts increasingly go online, however, personal information such as that contained in court filings may be posted on the Internet available for some legitimate uses but also vulnerable to misuse or objectionable re-use.

In some cases, personal information of parties with only limited interest in a bankruptcy case can be widely distributed and posted online. Last August, for example, employees of an Internet retailer were shocked to learn that their salaries, bonuses, stock-option information, and home addresses were posted on the Web. Their employer, Living.com, had filed for bankruptcy and submitted all corporate financial data to the courts. Then, at the request of the company's creditors, the trustee in the case posted this highly personal data, information about employees, not about debtors, on the Web. In an unusual twist, the home addresses of 1,000 of Living.com's creditors were also posted on the Internet. The Living.com case demonstrates the risks of automatic electronic disclosure of data, threats that can befall not just debtors, but employees and even creditors.

Federal agencies could also do a better job of protecting the privacy of those who do business with or seek help or information from the government. A recent GAO study reports that while most major federal agency sites post privacy notices, many do not do so on pages that collect personal information and few satisfy the principles of notice, choice, security and access that the Federal Trade Commission believe should be met by commercial sites. Moreover, the Privacy Act has not been seriously examined or updated for over twenty years. It is not doing the job it was originally intended to do of protecting the privacy of personal information provided to and held by the government. I look forward to working with the Chairman on addressing these and other important privacy issues in this Congress.

Mr. HATCH. I certainly share your concerns regarding the privacy implications of government actions. I should note that I understand the Judicial Conference is also looking at this issue, but it is clearly one that we must oversee as it raises important policy issues, as well as important First Amendment and Fourth Amendment concerns. In the bankruptcy context, I should state that I believe it is critical that a delicate balance be established between the privacy interest of the debtor who seeks to take the privilege afforded under our bankruptcy laws, and the need in the case of bankruptcies for creditors whose debts are being extinguished, as well as those who enforce against fraud in our bankruptcy system, to obtain information about the debtor and the bankruptcy case. A fair balancing of these competing concerns is critical, and one that the Congress, and particularly the Judiciary Committee, must take an active role.

I think that there is no question that making sure the privacy policies and practices of the Federal Government is important. In addition, we should make sure that the privacy laws gov-

erning the Federal Government's use of personally identifiable information work effectively. This is an important issue that we can both work together to make happen, and if I remember correctly, it is one that Attorney General Ashcroft has similar concerns about.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators speaking for up to 10 minutes each.

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

THE VISIT OF SOUTH KOREAN PRESIDENT KIM DAE JUNG

Mr. DASCHLE. Mr. President, I want to share with my colleagues a letter that Representatives GEPHARDT, LANTOS, SKELTON, Senators BIDEN and LEVIN, and I recently sent to President Bush. The letter outlines our support for efforts to work with our South Korean friends to address the threats to our security emanating from North Korea.

Like President Bush, we harbor no illusions about the challenges posed by the North Korean government. To say North Korea's actions the past several decades have greatly troubled the United States and the world is an understatement. However, we also recognize that we cannot simply ignore the challenges the current regime poses for the international community; the stakes, which include the proliferation of missile technology, are simply too high.

Last week Secretary Powell publicly recognized that the Clinton Administration made progress in addressing the threats posed by North Korea. We agree with that assessment. We believe the record shows that the Clinton Administration fell just short of reaching a comprehensive agreement with the North Koreans that would have dramatically reduced tensions between the two Koreas and between North Korea and the rest of the world.

Given the urgency of these threats and the fact that a breakthrough appeared imminent just months ago, it is in the U.S. national interest to pursue additional discussions with the North Koreans. Only by allowing our negotiators to sit down with their North Korean counterparts will we be able to determine whether that recent progress contains the seeds of a comprehensive and verifiable agreement with North Korea.

Let us be clear. The burden here is on the North Koreans to prove that they will join the international community. We may find that a deal is not possible. But to walk away from that effort now, without knowing whether a deal is possible, is to pass up an opportunity to