that real wages are declining for workers across America. People are working harder and falling further behind.

I see my colleague from the Judiciary Committee. If he is here on behalf of Senator SPECTER to lay down the bill, I yield the floor pursuant to my earlier unanimous consent request to allow Senator SESSIONS to lay down the bill and make a statement if he wishes, and then I will reclaim my morning business time, if there is no objection.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ORDER OF PROCEDURE

Mr. SESSIONS. Mr. President, I ask unanimous consent that 30 minutes of additional morning business time be set aside at 2:15 today and that Senator BYRD be recognized at that time; provided that following the expiration of the Republican morning business time the Senate resume consideration of Calendar 14, S. 256, the bankruptcy bill.

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

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the pending committee amendments be agreed to and be considered as original text for the purposes of further amendment.

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

Mr. SESSIONS. Mr. President, I am pleased we are able now to move forward with this bankruptcy bill. We have been at it 8 years. It has passed this Senate 3 different times, one time with over 90 votes, and the last time was 83 to 15. It represents many years of steadfast debate and discussion.

I see my colleague from Illinois, Senator DURBIN, has been very active in all of this debate. As a matter of fact, at one time he was sponsoring the bill. He has continued to offer amendments that he believes improve it. Some have been accepted and made a part of the bill, some have not.

I think his evaluation of the legislation is far too negative in terms of the impact it would have on poor people. I believe it is going to benefit poor people. It is going to benefit families. It is going to benefit mothers with children. Clearly, it will do that and it will crack down on abuses.

Are there additional abuses we would like to deal with, one in particular he just mentioned, the homestead exemption? I would like to have gone further. It is in the constitution of quite a number of States that homesteading is so much and Senators have dug in their heels and said this overrides the Florida constitution, the Kansas constitution, the Texas constitution, or I cannot agree to do that on the floor, I will fight this bill and object to it if anyone tries to do that.

So we made some improvements in the abuses on homestead. I think that was the right direction. I wish we could have gone further. Senator HERB KOHL and I would have offered the amendment that could have changed it even more significantly, but perfect is not always achievable. I wish we could do more, but I think we made some real progress. We delineate those steps that tighten it up and make it much more difficult to abuse the homestead exemption. One has to actually live in a house for 2 years in that State or they cannot take advantage of it. That is a step forward and will stop these people from buying a house on the eve of filing bankruptcy. So there are some good things.

With regard to health care, let us talk frankly about health care. Yes, it is a factor in quite a number of bankruptcies. It is not the No. 1 factor. In my view, over half the bankruptcies are clearly not driven by health care, but a large number of them are impacted by health care bills.

The question is this: Will it change the situation for poor people who have health care bills? Will they not be able to take advantage of bankruptcy and wipe those debts out today, just like they would? Well, if they make below the median income—and we think about 80 percent of the filers in bankruptcy make below median income—the law is not going to change. They will still be able to wipe out any debts they have for medical or other reasons.

Then what about if one has a continuing health care debt, and they make above median income but they have a serious medical cost which is recurring regularly, what can they do about that? They will have a harder time going into chapter 13 and paying back some portion of the debts that they owe, people argue, and they are correct, but under this bill the bankruptcy judge can calculate that extra recurring health care debt as part of the expenses and those people would still be able to file under chapter 7, wiping out all of their debts, if that is what they chose to do. If they make above the median income and are able to pay off some of their debts to their doctor and their hospital, why shouldn't they? You mean they have no obligation to pay a hospital that may have spent a lot of money helping them get well or a physician who took care of them and provided medical care to them? If they are making $80,000 a year and in bankruptcy under chapter 13 the judge finds that a person could pay back 25 percent, why should they not pay 25 percent? The judge will not order it unless he believes based on the person's income level they have the ability to repay.

When a person in America undertakes an obligation to pay someone, they ought to pay them, and in any country that is so. We are drifting a bit to suggest there is no real obligation to pay the debts we incur. If we get to that point, then we have eroded some very important fundamental moral principles about commerce in America.

I know Senator DURBIN has an amendment he would like to offer, and I will not delay him from doing that. I have some other things to say in general about the bill, and I can say those later. I believe this is a rational bill. That is why it has such broad support. I believe this bill says plainly and clearly, if one can pay back some of their debts, they ought to do so. There is no reason why somebody making $100,000 who can pay back 20 percent of the debts he owes to the person who fixed his car or the doctor who helped him get well should not pay that back. Why should they wipe out all of those debts?

For the vast majority of people who file, they will be able to file under chapter 7 and wipe out all of their debts if that is what they choose.

I will say one thing further about chapter 13. That is the category of bankruptcy a person would be put into if they were required to pay some of their debts back. Chapter 13 has been a part of bankruptcy law for quite a long time. In my home State of Alabama, over half the bankruptcies are filed under chapter 13. People want to pay their debts. They are behind in their debts. People are bugging them, the phones are ringing, lawsuits are being filed, and they are overwhelmed. They cannot pay all of their debts at once and they file under the bankruptcy law. They say, I want to pay back a percentage of my debts, Judge, and if you will set out a schedule, if you will get these creditors off my back and have them quit calling me, quit suing me, quit sending me demand letters, you set up the schedule, I will pay this one so much a month and this one so much a month. That is a healthy, good thing. We ought to do more of that.

In some States, under 5 percent of the debtors go into chapter 13. That number ought to come up because a lot

of those people in some of these States that are so few in choosing chapter 13 should be in chapter 13 for their own self-interest.

One may ask, well, what about these people in Alabama? Are they making them go into chapter 13? No, they have chosen to go into chapter 13 because they want to pay back a portion of their debts. They want to stop the lawsuits from going on. There are other advantages to it, such as being able to keep an automobile and the apartment or the house that one owns in ways that one would otherwise not do.

There are some real advantages of going into chapter 13 rather than chapter 7. Many people choose it and in some areas of the country it is very much underutilized. This will capture only about the top 20 percent. One expert at our committee hearing said about 7 of those will have extra continuing debts that will take them out of it, so it will probably not be much over 10 percent of the filers who will be impacted. But some of those are the biggest offenders. Some of those are the people with the highest income. As a matter of fact, all of them will be people with incomes above the median income. They ought to pay some of their debts back. This bill will say that they must do that.

I think it will help us in many ways to have more integrity in the bankruptcy system. That is why we have such strong support for it. I am sure we will have a full and open debate as we go forward the rest of this week. I hope we will have a vote, and I suspect we will have another strong vote for final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, for clarity I would like to yield back all time in morning business and go to the bill at this point.

The PRESIDING OFFICER. The Senate is on the bill now.

AMENDMENT NO. 16

Mr. DURBIN. Mr. President, I send an amendment to the desk, and I will ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself, Ms. STABENOW, Mr. BAYH, Ms. LANDRIEU, Mr. LEAHY, Mr. LEVIN, Mr. SCHUMER, and Ms. CANTWELL, proposes an amendment numbered 16.

Mr. DURBIN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To protect servicemembers and veterans from means testing in bankruptcy, to disallow certain claims by lenders charging usurious interest rates to servicemembers, and to allow service members to exempt property based on the law of the State of their premilitary residence)

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if—

''(i) the debtor or the debtor's spouse is a servicemember (as defined in section 101 of the Servicemembers Civil Relief Act (50 App. U.S.C. 511(1)));

''(ii) the debtor or the debtor's spouse is a veteran (as defined in section 101(2) of title 38, United States Code); or

''(iii) the debtor's spouse dies while in military service (as defined in section 101(2) of the Servicemembers Civil Relief Act (50 App. U.S.C. 511(2))).

On page 67, between lines 18 and 19, insert the following:

SEC. 206. DISALLOWANCE OF CLAIMS FILED ON HIGH-COST PAYDAY LOANS MADE TO SERVICEMEMBERS.

(a) 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

(3) by adding at the end the following:

''(10) such claim results from an assignment (including a loan or an agreement to deposit military pay into a joint account from which another person may make withdrawals, except when the assignment is for the benefit of a spouse or dependent of the debtor) of the debtor's right to receive—

''(A) military pay made in violation of section 701(c) of title 37; or

''(B) military pension or disability benefits made in violation of section 5301(a) of title 38; or

''(11) such claim is based on a debt of a servicemember or a dependent of a servicemember that—

''(A) is secured by, or conditioned upon—

''(i) a personal check held for future deposit; or

''(ii) electronic access to a bank account; or

''(B) requires the payment of interest, fees, or other charges that would cause the annual percentage rate (as defined by section 107 of the Truth in Lending Act (15 U.S.C. 1606)) on the obligation to exceed 36 percent.''.

(b) CONFORMING AMENDMENT.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) Notwithstanding paragraphs (2), (4), and (6) of subsection (a), a debt is dischargeable in a case under this title if it is based on an assignment of the debtor's right to receive—

''(1) military pay made in violation of section 701(c) of title 37; or

''(2) military pension or disability benefits made in violation of section 5301(a) of title 38.''.

On page 132, between lines 5 and 6, insert the following:

SEC. 234. PROTECTION OF SERVICEMEMBERS' PROPERTY IN BANKRUPTCY.

(a) IN GENERAL.—Section 522(b) of title 11, United States Code, as amended by section 224, is further amended—

(1) in paragraph (1), as redesignated, by striking ''either paragraph (2) or, in the alternative, paragraph (3) of this subsection'' and inserting ''paragraph (2), (3), or (4)'';

(2) by redesignating paragraph (4), as added by this Act, as paragraph (5); and

(3) by inserting after paragraph (3), as redesignated, the following:

''(4) If the debtor is a servicemember or the dependent of a servicemember, and the date of the filing of the petition is during, or not later than 1 year after, a period of military service by the servicemember, property listed in this paragraph is—

''(A) property that is specified under subsection (d), notwithstanding any State law that prohibits such exemptions; or

''(B) property that the debtor could have exempted if the debtor had been domiciled in the State of the debtor's premilitary residence for a sufficient period to claim the exemptions allowed by that State.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (13A), as added by this Act, the following:

''(13B) 'dependent', with respect to a servicemember, means—

''(A) the servicemember's spouse;

''(B) the servicemember's child (as defined in section 101(4) of title 38); or

''(C) an individual for whom the servicemember provided more than 50 percent of the individual's support during the 180-day period immediately before the petition;'';

(2) by inserting after paragraph (39A), as added by this Act, the following:

''(39B) 'military service' means—

''(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

''(i) active duty (as defined in section 101(d)(1) of title 10); and

''(ii) in the case of a member of the National Guard of the United States, service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

''(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

''(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause;'';

(3) by inserting after paragraph (40B), as added by this Act, the following:

''(40C) 'period of military service' means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember—

''(A) is released from military service; or

''(B) dies while in military service;''; and

(4) by inserting after paragraph (51D), as added by this Act, the following:

''(51E) 'servicemember' means a member of the uniformed services (as defined in section 101(a)(5) of title 10;''.

On page 191, between lines 11 and 12, insert the following:

SEC. 322A. EXEMPTION FOR SERVICEMEMBERS.

Section 522 of title 11, United States Code, as amended by sections 224, 308, and 322, is further amended by adding at the end the following:

''(r) If the debtor or the spouse of the debtor is a servicemember (as defined in section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511(1))) or a veteran (as defined in section 101(2) of title 38, United States Code) or the spouse of the debtor dies

while in military service (as defined in section 101(2) of the Servicemembers Civil Relief Act (50 U.S.C. App. 511(2))), and the debtor or the spouse of the debtor elects to exempt property—

''(1) under subsection (b)(2), the debtor may, in lieu of the exemption provided under subsection (d)(1), exempt the debtor's aggregate interest, not to exceed $75,000 in value, in—

''(A) real property or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor; or

''(2) under subsection (b)(3), and the exemption provided under applicable law that may be applied to such property is for less than $75,000 in value, the debtor may, in lieu of such exemption, exempt the debtor's aggregate interest, not to exceed $75,000 in value, in any property described in subparagraph (A), (B), or (C) of paragraph (1).''.

Mr. DURBIN. Mr. President, I will go to this amendment in a moment, and it is one I hope all Members will listen to carefully because it is an effort to protect our military from the provisions of this bill, particularly in light of the activation of Guard and Reserve units across America and the financial hardship it has created. I will speak to that amendment after I address this bill a few moments more.

I thank my colleague from Alabama. We see this issue differently, but there are some things on which we agree. I think my colleague from Alabama is doing the right thing on the homestead exemption because if you could walk into bankruptcy court having just bought a multimillion-dollar mansion in Florida and then say, I don't want to be held responsible for my debts, and then the court says, Of course, your home you can keep, your home is your castle, and that home is worth millions of dollars, you have just defrauded the system, as far as I am concerned. Here you are with a multimillion-dollar home and these debts and you do not pay your debts, and the States of Florida, Texas, Kansas, and a few others say whatever your home is worth, it is exempt.

It is a loophole in the law. If we are talking about just and right conduct in this situation, then clearly we would change the homestead law. I salute my colleague from Alabama because he has been a leader on this issue. It is unfortunate that we have been unable to reach a better agreement as we go forward on this bill.

Mr. SESSIONS. Will the Senator yield for a brief question?

Mr. DURBIN. I yield for a question without yielding the floor.

Mr. SESSIONS. I don't think the Senator would deny that this new bankruptcy reform bill makes it more difficult than current law to abuse the homestead exemption.

Mr. DURBIN. Yes. I would not.

Mr. SESSIONS. We didn't go as far as we would like to go, but we did make some progress.

Mr. DURBIN. I think the Senator from Alabama is correct. The bill makes an improvement, but it doesn't reflect the combined wisdom of the Senator from Wisconsin and the Senator from Alabama, an amendment I was more than happy to support.

So here is this bankruptcy bill, and we are talking about ordinary Americans going into bankruptcy court. We did a survey. We took a look at 1,900 bankruptcies across the United States and said: What brought you to court? Why did you finally have to file for bankruptcy?

More than half of them said medical bills. Three-fourths of the people who filed for bankruptcy because the medical bills had swamped them, three-fourths of those people had health insurance when they were diagnosed but they didn't have enough. It did not cover enough. Or they lost their job and then they couldn't keep up with it.

Is there one of us—I guess there are some, but is there one of us who believes that we are invulnerable when it comes to medical debt? You know better. You go to the doctor's office thinking everything is just fine and you are diagnosed with a serious illness which results in surgeries, chemotherapy, and long hospital stays. Who among us can say, I'll just write a check; I will cover the difference in my health insurance? Not many. Maybe a handful of people but not many.

So what happens? You go to the hospital. You get treated. When all is said and done you try to get well and go back to work, and there is this huge shadow over your life. They call and they say: We want you to pay.

You pay some, but you can't pay enough and the next thing you know you are consumed with paying this debt, but you just can't do it; it is way beyond your means. What do you do? You do what you can legally do in America today. You go to a court and say: I have to file bankruptcy. I don't have enough assets. I will never be able to pay off this debt.

The court may decide you will never be able to pay off this debt. If they think you can, they may put you on a schedule to make certain payments for a period of time. But say you are a waitress at a diner. You went through breast cancer, surgery, and treatment. You have $50,000 in debt, and what are your assets, $20,000? This will never work. You will never get out from under this debt so you can file for bankruptcy. You can clean the slate. You can start over.

That is the law. It is embarrassing. People don't like to go through it, but they are forced into it.

What this bill says, for those people who get in those circumstances, is we are going to make it tougher for you. Let me give you one little illustration of how they make it tougher.

Imagine you have this huge medical debt hanging over your head. The creditors are not only calling you at home, they are calling your kids at home. The kids are crying, saying: How many more phone calls do we have to take, Mom?

You get to go to bankruptcy court, but you just discovered something. You don't have enough money on hand. You have barely enough to get from paycheck to paycheck, and the attorney says: I will represent you, but there is a $209 filing fee to go into bankruptcy court, and I am going to need at least $500 to start this proceeding as your attorney.

What am I going to do? I have a credit card. I am going to go ahead and take cash out of my credit card to pay the filing fee and to get $500 for the lawyer so I can go to court. If I do that within 70 days of filing bankruptcy, they declare this as a fraudulent transaction that cannot be discharged in bankruptcy. That credit card debt for $740-plus within 70 days of filing is with me forever. The credit card company has me forever until I pay it off.

Some people will say: We have to hold these people to a high moral standard: Pay back your debts, be responsible.

I agree with that. But the law has said for decades that there are some people who can't do that. They reach a point where they cannot physically do it. They are not making enough money and they never will. So you know what I did in the Judiciary Committee? I said to my colleagues in the Judiciary Committee, if this is about your moral responsibilities, let's talk about some of the corporate CEOs that we have heard so much about recently and their moral responsibilities. I used as an illustration Kenneth Lay, CEO of Enron. Mr. Lay took $81 million in loan advances from Enron before the company declared bankruptcy. Do you remember what happened when it declared bankruptcy? Not only did the shareholders lose, the employees lost, the retirees at Enron lost, and retirees across America who had investments in Enron lost, too.

So I said to my friends on the Judiciary Committee: If we are going to hold this woman with her medical bills, who just took a cash advance of $740, to high moral standards, shouldn't we hold Mr. Lay to high moral standards? Shouldn't we look back and see what his corporate activity was?

They said: No. We are just interested in the woman with breast cancer. We don't want to talk about Kenneth Lay.

How about Dennis Koslowski, Tyco chief executive? Do you remember his situation? He had Tyco pay for a $30,000 shower curtain; $30,000 paid by the corporation, and he took a total of $135 million out of the corporation in loans

and company payments for his personal use and then went right into bankruptcy. I said to my friends on the Judiciary Committee: How about that? Here is a situation, this corporate executive fleeced his company, pushed them into bankruptcy, hurting millions of people, shouldn't we look back and hold him accountable?

No, we are not interested in Dennis Koslowski, nor WorldCom CEO Bernie Ebbers, who took $408 million. We are interested in the woman, single mother with two kids, who is a waitress, who can't pay her bills for breast cancer. That is who we are interested in.

That tells you what this bill is all about. This bill is all about the bankruptcies of ordinary Americans, ordinary Americans who are seeing their jobs outsourced, ordinary Americans who are seeing their health insurance downsized if they are lucky enough to have it, downsized every year, ordinary Americans who have seen their real wages decline, ordinary Americans who are not even being paid a minimum wage that reflects the cost of getting by in America, ordinary workers who are losing overtime pay because this administration is restricting the rules for eligibility on overtime. These are the people we are after. We are not after those corporate CEOs. We will save them for another day. Right. Don't hold your breath.

Isn't it interesting at a time when health care in America is so hard to come by and so expensive, when the Government is talking about cutting back on Medicaid, when we have no proposals to help people with their health care insurance, when we know it is driving people deeper and deeper into debt and more vulnerability, that we come up with a bill that is going to make it tougher for those who cannot pay their medical bills? It tells you about this Congress and its priorities.

This is our second bill. This is our second highest priority in this session: Do something about that woman with breast cancer. She is going to that bankruptcy court, and it is not morally right.

The credit card industry is pushing this bill big time. I told you earlier in the year 2003 the credit card industry had $30 billion in profit. They don't acknowledge the obvious. If there are abuses in the bankruptcy system there are sections to cover it; 707(b) allows the bankruptcy court to deal with substantial abuses of the rules. That is already in the law. If a bankruptcy judge suspects a person is going to walk on the debts he can pay, the judge orders a trustee to investigate, and if the trustee says the person is hiding assets, the judge can tell the person: I will not discharge your debts.

That is already in the law, and that is the way it should be.

Last year, they investigated over 3,000 cases where they suspected somebody was cheating the bankruptcy system, and it ordered the petitioners to pay their debts in over 95 percent of them.

The system is working. The credit card companies don't need new laws to catch deadbeats. The credit card companies want this law so they can squeeze every last dollar out of decent, hard-working, play-by-the-rules people who have already been devastated economically by traumatic events such as job loss, divorce, and, increasingly, medical problems.

We had a hearing on this bill: 2 hours and 15 minutes. Senator HATCH said, at one point, if this hearing went any longer, it would have cost him his sanity. I won't comment on that. But I think we could have taken a few more minutes on this bill, even invited or subpoenaed the credit card companies to come up and explain why they need this so desperately.

I think we understand what is going on here. The Harvard law and medical schools did a study, the first indepth study of the medical causes of bankruptcy. It is an indepth examination of the records in 1,900 bankruptcy cases filed in five different bankruptcy courts across America, including one in Illinois. It showed that half of the bankruptcies in this country are because of high medical bills.

Listen to these statistics. Two million Americans each year are driven into bankruptcy by medical debt. Three-quarters of them had health insurance when they first got sick. Most of them lost their insurance when they got fired because they were too sick to work anymore, or they were bankrupted by out-of-pocket expenses that policies didn't cover. Are these morally flawed people? Are these irresponsible people who got sick? They are good people who had the misfortune of illness.

Harvard law professor Elizabeth Warren, one of the authors of the study, said:

> These are hard-working, ''play by the rules'' people who have health insurance and have discovered that they were just one bad diagnosis away from financial disaster. I think that's the real heart of the story. This is about people who thought they were all safe. Accountants, lawyers, teachers, police officers, airline mechanics, members of the National Guard who get sent to Iraq for a year, the family next-door—that is who is going bankrupt in America, families who spend nearly every dollar they earn, not on luxuries but on necessities and basics: childcare, health care, a decent home, and a safe neighborhood. They have very little savings. They are not doing that well. They dip into their savings when they have to. They may even try to take their money out of their 401(k). Maybe they take out a second mortgage. When that money is gone, they turn to credit cards for basics such as food, gas, and doctors' bills. They have done their level best to raise their kids right and honor their obligations. According to Professor Warren, the average American filing for bankruptcy spends more than a year struggling with debts before filing. This is not an impulsive thing. Four out of ten people she interviewed said they had their phones shut off in the 2 years before they filed. More than half skipped doctor or dental appointments because of the cost. More than 40 percent had failed to fill a prescription, and more than one in five had gone without food—without food—because of the cost. By the time they finally gave up and went to bankruptcy court, the average family owed more than a year's salary in debt, other than their mortgage. Getting the last pound of flesh from these families, that is what the bill is all about.

What is the incidence of abuse? We can almost agree on it.

The American Bankruptcy Institute is a nonpartisan research and education organization that says 3 percent of the people who file for bankruptcy could afford to repay—3 percent. This is about 1.1 million who file each year. The rest don't have two nickels to rub together. The credit card industry says it is 10 percent. Even if you accept their own figure, that means 90 percent of the people who file for bankruptcy are flat broke. They should be left alone.

Under current law, these 90 or 97 percent of bankruptcy petitioners show a bankrupt judge how much they owe and how much they earn. It is a simple process. You could fit the paperwork on a single sheet of paper and have room left over.

If the judge agrees the person cannot afford to pay all of his or her debts, the petitioner can file for chapter 7 bankruptcy, and the credit card debt, medical bills, and other unsecured debts can be discharged, wiped away. Bankruptcy is still financially and emotionally draining, but at least the person can stop at zero.

The bill we are considering assumes that the majority of people are out to cheat the system. Despite the fact that even the credit card industry says 90 percent of the people are not, this bill assumes they are.

We create a means test—a means test that adds complication to the process, greater legal bills, and greater legal costs for the person in bankruptcy who is trying to get out from under the problem with the means test.

The way the law works now, bankruptcy judges have the authority and discretion to look at how much debt a person has and how they acquired the debt. Then the judge decides: Is this someone who is trying to game the system? Is this someone who has been dealt some hard blows in life? Is this debt brought on by buying a plasma screen television, or taking that cruise, or is it a desperate effort to pay doctors' bills and buy groceries and not see the house foreclosed on?

The means test in this bill wipes out the judge's discretion. The judge can't look at a real person. The judge looks at numbers on paper. The means test isn't really meant to screen out cheaters. There is already a provision in the

law for that. It is designed to trip people up, add legal expenses, and force more families into chapter 13.

This isn't a balanced bill. Unfortunately, the scandals I have talked about at Enron, Tyco, and WorldCom are the subject of a good bankruptcy bill. We are not going to consider that. We don't deal with corporate bankruptcies here, that is over the line. We deal with the bankruptcies of ordinary individuals.

Let me tell you about the amendment I am offering because the people I am offering it on behalf of are far from ordinary. They are mothers, fathers, Americans in our country today. These are the men and women in uniform. I have seen them and you have, too. You have seen them on the news—risking their lives in Iraq, Afghanistan, Korea, and around the world. I have seen them in Illinois, as we send our troops to go serve overseas—in Litchfield, IL, about a month ago. There was not a dry eye in the house. About 100 of them were infantry, activated, standing at attention in the Litchfield High School gymnasium. There we sat with the stands filled with families praying for their safe return. We watched them file by and we shook hands with every one of them, saying: Godspeed. We are on your side. We won't forget you. You are in our thoughts and prayers.

Here comes this bankruptcy bill. Do you know what happens? You end up with men and women in uniform—activated Guard and Reserve, and other active military—sent to battle, sent to combat, where every day their life is at stake, and meanwhile many of them are facing extraordinary hardships at home. They and their families have lost their life's savings which they cannot deal with because they are defending our country.

Military service always involves sacrifice. In times of war, those sacrifices multiply. Extended deployment means long difficult separations. Military service means extraordinary financial hardships.

I asked the GAO to look into issues affecting the economic security of our troops; in other words, what is happening to families' finances when they serve our country and go overseas. There isn't a lot of data. They went back to the 1999 Defense Department survey. In that survey, they found 16,000 Active-Duty members of the military had filed for bankruptcy in the preceding 12 months. That was 1999, 6 years ago.

We know the economic stress on military families has increased dramatically since then. We are at war with 150,000-plus in Iraq and thousands in Afghanistan.

Since September 11, 2001, more than 469,000 National Guard members and Reserves from the Army, Marines, Navy, and Air Force have been called up for combat in Iraq and Afghanistan—the largest deployment of U.S. Guard and Reserve forces in 50 years. Reservists' tours of duty can last up to 24 months today. The Pentagon is considering extending that time limit.

I have a pie chart I would like to show you which demonstrates some of the problems facing the military.

In 2002, the Department of Defense conducted a survey of military spouses. Here is what they found.

Thirty percent—almost one-third—of all military families reported a loss of family income when the spouse was deployed; almost one out of three.

Part-time military—National Guard and Reserve members—were especially hard hit; 41 percent of Guard and Reserve families lost income when a spouse was deployed—41 percent.

Let me just say parenthetically my salute to all of the companies, all of the units of government that have stood behind the men and women in uniform and have said: We will protect your pay while you are gone. We will make sure you don't get penalized. How embarrassing it is to stand here today and tell you that our Federal Government does not stand behind the men and women in the Federal workforce who are activated. We don't make up the difference.

So 41 percent of those Guard and Reserve activated who have lost income include a lot of Federal employees. The average income varied by branch, ranging from an average of $600 lost for Air National Guard members, to $3,800 for Marine Corps reservists.

Senior officers lost an average of $5,000 in lost income and $700 per enlisted member.

Reservists who own their own businesses are especially hard hit. Fifty-five percent of self-employed reservists lost money when they were activated. The average income loss for these families is $6,500.

For reservists with specialized degrees and training, the income loss was even greater. Doctors and registered nurses who are mobilized report an average loss of $9,000. Doctors in private practice lose an average of $25,000. The list goes on.

Many of these families manage to scrape by using their savings and relying on relatives and friends. Some families do all of these things, but their financial problems still become so severe that they have no choice but to file for bankruptcy.

They are the people we are talking about in this bankruptcy bill. We are not talking about someone in a distant State in a circumstance we can't understand. We are talking about an activated member of the Guard and Reserve deployed for a year or 2 years who loses his business and has to file for bankruptcy. The law we are going to pass is going to make it more difficult for that person to file for bankruptcy.

Senator EVAN BAYH is one Member who supports this amendment. He calls it the ''patriot penalty.'' We are penalizing those serving our country by making it tough for them when they become bankrupt because they have lost all of their income serving America.

Let me give you an example.

Ray Korizon is from Schaumburg, IL. Before the Persian Gulf war in 1991, he owned a construction company that employed 26 employees. He lost his business when his Reserve unit was deployed for 6 months. Today, he works for the Federal Government.

Some of the self-employed reservists who have been called to duty in this war are facing similar financial hardships. Army Reserve SGT Patrick Kuberry is one of them. He and a business partner—an Army Reserve colonel—used to own two small restaurants in Denver. Like most owners of small restaurants in Denver, CO, they both worked long hours. They didn't make a lot of money, but they made enough to support their families. Then came 9/11 and the economic downturn. They had to close one of the restaurants. In April 2003, his partner was called up and sent to Afghanistan. In June 2003, Sergeant Kuberry's unit was called up. He spent 11 months in Africa. That was the last blow. Without either man home to work, the remaining restaurant went under. Sergeant Kuberry and his partner were forced to file for personal bankruptcy.

Another story: Rick Parsons and Dave Young are both Army Reserve majors from Rochester, NY. In civilian life, Rick Parsons is a veterinarian in private practice and Dave Young is an accountant. They were shipped out with their unit to Afghanistan for a year. They were nearly wiped out financially. Rick Parsons couldn't find another vet on short notice to run his practice. He earned $70,000 during his year in Afghanistan, but he had to take out a loan for the same amount to save his practice. He figures he was within a month of having to go file for bankruptcy when he got home. Dave Young's wife and father were able to keep the small accounting firm going during the year he was in Afghanistan.

The other units were not so lucky. Another ended up with a mountain of medical bills after developing malaria.

Let me tell you about another person filing for bankruptcy. Kathy Cruz is a bankruptcy attorney in Hot Springs, AR. The State is home to the 39th Infantry Division of the Arkansas National Guard. In October 2003, the division shipped out for 18 months, including 12 months in Iraq. Six months later, the division deployed, the first Guard families began showing up at Kathy Cruz's office desperate for a way to hold on to their homes and avoid bankruptcy. One of her clients, a family with four teenagers, owned a combination gas station and convenience

store. The father was a reservist medic. With him in Iraq, there was literally no one to mind the store. So they closed the store. When they got into serious financial trouble, they gave their home back to the mortgage company so it wouldn't be repossessed. Then things got worse.

Is this irresponsible conduct of these people activated to serve America, to risk their lives in combat? While they are risking their lives, everything they own is at risk.

Things got so much worse, the soldier's parents had cosigned the loan for the business, trying to save it. While this soldier was overseas serving America, they had to declare bankruptcy or they would lose their home and the whole family would be on the street. The grandfather is disabled. The grandmother has gone back to work to try to keep the family afloat financially. The whole family recently came to Ms. Cruz in her office in Hot Springs. This is how she described the visit of this family.

You've got three generations sitting in front of you, scared out of their wits.

Ms. Cruz says she expects to see more such families in the future. In her words, ''This is the tip of the iceberg.''

Most families try to desperately avoid bankruptcy because of the stigma, the connotation of personal failure and their own moral code that says you pay back what you owe. Many military members and families try doubly hard to avoid it because of the mistaken belief that bankruptcy alone can be grounds for a dishonorable discharge. They are encouraged to believe that, in many cases, by payday lenders that cluster around military bases and communities who are going to let people know inside the base if the soldiers don't pay off.

Let me tell you about loan sharks. Payday lenders are legal loan sharks that offer small, short-term loans at interest rates of 100, 500, even 1,000 percent. When the borrower can't pay back the loan, the payday lender offers them another loan, and then another loan. In fact, a recent study in Iowa found that customers typically roll over interest.

Payday lenders specifically target military members because they know they have a steady source of income, many are young and inexperienced, they have family obligations, they are strapped for cash, and they are easy to find. And, most offensive, payday lenders target military members because they know these are people who are hard working and honest and who believe in personal responsibility and integrity.

Operations like these and others employ former military personnel to solicit soldiers. They use gimmicky, misleading names such as Force One Lending, Armed Forces Loans, Military Financial, and American Military Debt Management Services.

Let me show you this chart of payday lenders in the State of Georgia.

Military loan: Here is an example of one of them. This is what you see on highways and roads leading into many military bases and communities: Store-front pawn dealers, payday loan shops, and ''debt consolidation'' operations, all trying to lure military members and their families with the promise of fast, easy money which they can never pay off.

This is a store-front payday loan store in King's Bay, GA, just across the State line from a military base in Florida. Note the name of this operation, ''Pioneer Military Loans.''

Here is another operation on the same highway, ''T&C Pawn.'' Isn't it appropriate that right next door is a unit known as Fleet Cleaners. You get to go to the cleaners in both places.

Retired Navy veteran Peter Kahre made the mistake of taking out a loan with a business like this more than a decade ago when he was stationed at Jacksonville Naval Air Station. He is still haunted by it. When Kahre was deployed in 1996, the ''basic sustenance'' portion of his military pay was cut by $197 a month because his food was now being prepared onboard. That pay cut, plus the arrival of a new baby, put his family in a bind. So Kahre borrowed $100 from a payday lender.

When he could not repay that loan, he took out another, and another, until he had loans with 10 different payday lenders. He estimates he paid back $20,000 on loans for which he received a total of not more than $3,000, before he was finally forced to file for bankruptcy.

Let me show you some of the ads from the payday lenders in the Army Times to give you an idea what these folks are after. This one is for our men and women in uniform: ''INSTANT CASH.'' ''Advanced Pay Loans.'' ''How we beat the competition:'' ''Bankruptcies OK.'' They cannot wait to lure the men and women in uniform into these outrageous loans. ''Bankruptcy no problem!'' In other words: We will lend you money even though we know you probably cannot afford to pay it back.

There is another kind of predatory lender that clusters around military communities. They lend money in exchange—listen to this—for military members and veterans signing over their pension benefits. Imagine, if you will—I have read the case that was reported in the news—a sergeant had married a young woman in the Philippines. He could not afford to bring her to the United States. He went in and pledged his military retirement as collateral for one of these loans.

''Cash now!'' Look at this one: ''Lump sum paid for pensions, VA disability, VSIs. Credit problems OK!'' These are the people we talk about who end up getting snared into these outrageous, usurious loans they will never be able to pay back.

The National Consumer Law Center released an excellent report in May 2003. Every Member of the Senate ought to read it. In it you will find story after story of military members and veterans who have suffered serious financial problems because of predatory lenders.

Now let me tell you about the amendment I am offering. Whether the person is career military or Guard or Reserve, the men and women of our Armed Forces make extraordinary sacrifices to defend our Nation. They put their lives on the line, their comfort, their freedom, their time with their families. They sacrifice their health, even their lives. Many of them make major financial sacrifices.

Today, I am offering an amendment that will give military members who have been forced into bankruptcy because of income loss connected to their service the hope of a second chance.

My amendment does not grant military members any favors. It is not a ''get out of debt free'' card. The members of the military I have met would not want that kind of special treatment. They are men and women of integrity who want to pay their debts and honor their obligations. This amendment simply protects the people who protect us from the possibility of spending the rest of their lives in a figurative debtor's prison.

Let me show you a chart in reference to the amendment. It has four basic elements. My amendment protects three groups of people: service members, military veterans, and spouses of service members who die in military service.

We protect them in bankruptcy with four provisions.

First, we prevent unscrupulous payday lenders from using bankruptcy courts to fleece military members, veterans, and spouses of service members who die in military service. Any claims based on debt they owe that require payment of interest, fees, or other charges in excess of 36 percent would not be collectible in bankruptcy proceedings.

Second, my amendment exempts members of the armed services, veterans, and spouses of service members who die while in military service from the onerous means test provisions of this bill. Again, this is not a ''get out of debt free'' card. It simply allows the bankruptcy judge—not an arbitrary and inflexible formula—to determine whether a military member, a veteran, or a surviving spouse of a service member who dies while serving America deserves the protection of chapter 7. It is left to the judge's discretion in these cases when it comes to the military.

Men and women who volunteer to go to war should not have to wage war against the mountain of paperwork this bill creates.

Third, service members face a problem that most other bankruptcy petitioners do not. They do not choose where they live. They are sent on assignment by the military. That can have major economic consequences.

I have a chart that shows some of the homestead exemptions. In other words, when you go to bankruptcy, you can usually protect your home, but every State is different. So if you are assigned, for example, to a base in Florida, there is unlimited protection for your home, if you file bankruptcy while you are in the military. In Ohio, it is $5,000. That is all that is protecting your home. In Nevada, it is $200,000. In Illinois, it is $7,500. If you are stationed in New Jersey, there is no protection at all, no homestead exemption.

So what we have done is to establish a basic homestead exemption. It would say that the members of the military are going to be allowed a $75,000 homestead exemption, or they can choose the exemption in the State in which they file.

There is another portion of this amendment which relates to the personal property that someone could exempt from bankruptcy. That exemption is different from State to State. For my State of Illinois, I remember from when I dealt with bankruptcy law, you can exempt your tools from being taken from you in bankruptcy—a reasonable idea. But for those sorts of things, every State is different.

So what happens to the member of the military who files and happens to be stationed in the State where they file for bankruptcy? We establish a Federal personal property exemption. I think it is reasonable so that the individual serving in the military has that protection.

Let me conclude. I know several Members are here to speak. We say all the time that we owe the men and women who defend our Nation a debt of gratitude we can never repay. That is true. But we can show that we honor their service by protecting them from spending the rest of their lives in a debtor's prison if their service obligations or serious illness or a string of bad breaks forces them to have to file for bankruptcy.

The credit card industry may argue my amendment is not needed because few military members and their families seek bankruptcy protection. No one knows that for sure. But if it is a small number, the protections of my amendment will not hurt this multibillion dollar industry.

Some may say that military members and their families do not deserve the protections of my amendment because they are somehow morally deficient—I cannot wait to hear that argument on the floor—the same charge supporters of the underlying bill make about all people seeking bankruptcy. Well, if opponents of my amendment think members of the U.S. military are lacking in moral fiber, they need to spend a couple afternoons with troops, maybe visit some of our injured soldiers, or go to the veterans hospitals across America. Talk to some of these soldiers struggling to learn to walk on new legs, begging to go back into battle with their units. Tell me they need a lesson in personal responsibility.

This amendment is about the men and women who protect us getting protection from the possibility of a lifetime of debt. It is about giving to those who risk their lives so our children can grow up in freedom the possibility of a second chance for their own lives. We cannot repay the debt we owe these men and women, but we can protect them from having to spend the rest of their lives in debt. That is what my amendment would do. I urge my colleagues—and I hope on a bipartisan basis—to support this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I share Senator DURBIN's respect for our men and women in uniform. I served over 10 years in the Army Reserve. I have made three trips to Iraq as a member of the Armed Services Committee. We work on those issues on a daily basis.

The last time I was in Iraq we were meeting with soldiers, and I had one tell me his business had been hurt by him being there. He lost income, and he was worried about it. We discussed that with the soldiers there.

Then later he came up to me and said: I want you to know, Senator, one hour from now I am signing up for another 7 years.

It made me proud to know that we have that kind of service personnel who are serving their country well. How we ought to compensate them, how we ought to benefit them is something all of us need to consider. We are having increased compensation plans, increased bonuses for reenlistment, and other increasing benefits for our personnel because we love them. We respect them. We want to affirm them. We want to carry our part of the burden that they are carrying as they serve us in dangerous areas of the globe today.

I want to point out, though, and bring ourselves back to where we are, this is not a bill that deals with American health insurance. It is not a bill that deals with compensation for the military. It is not legislation that should set bank lending rates. That is a Banking Committee issue, and it has been raised against this bill on a number of occasions. We have some credit card changes here, consumer-oriented credit card amendments that I know Senator DURBIN and others have asked for and have been cleared by the Banking Committee. But this is not the place to set banking regulations in a bankruptcy bill.

This legislation is designed to analyze what is occurring in Federal bankruptcy courts every day, to see what is happening there. What we have learned is that over the last 30 years, people have learned to manipulate this system in ways that are not good for the economy. Lawyers, particularly, have advised their clients on ways they can absolutely maximize their benefits under the bankruptcy law. And sometimes we have found that has not been healthy. As a result, these advertisements—and they are on television, in the newspapers, in the free things at the checkout counter where it tells you where you can buy things on sale—tell you how to file for bankruptcy. That is all right. It is a free country. But those of us who set policy and set the rules for the bankruptcy system need to analyze how it is actually working in bankruptcy court. We need to ask ourselves what we should do to make it better. And we need to do some things that help debtors such as single moms, who have bankruptcies filed against their child support and things of that nature, to put them higher up on the list of people who get compensated. We do that.

The testimony is unequivocal that with regard to family breakup, alimony and child support, this bill is a huge step forward for children and their parents who receive those benefits.

There is a lot in here that benefits people on a routine basis who have to go into bankruptcy court. Remember, if you make below median income in America and you file for bankruptcy, you can wipe out, as an absolute right, every debt you owe, no matter how you incurred it, for any reason.

I know Elizabeth Warren. She has been an activist against bankruptcy reform for years. And one thing she puts in her definition of debts arising from health care is gambling debts, for example. I believe those numbers that have been promoted at a recent hearing by her are at best a bit too high. They are really less. Are health care debts a part of this? Yes. Are there people with insurance who still don't have enough money to pay their health care debts? Yes. Do people who don't have insurance have health care debts that help cause them to be unable to pay their debts and go into bankruptcy? Yes. But what if you make $100,000 and you have $75,000 in debt? Under current law, you can go into bankruptcy court and wipe out every one of them. It can be your doctor, your local hospital, your local automobile dealership, your friendly mechanic, anyone you owe in the community—just wipe out those debts. You don't have to pay them.

Lawyers will tell them that. They are advertising how to do that. Beat

your landlord. Don't have to pay your rent. Come on down. We will keep you in your house another 6 months by filing bankruptcy, which will stay eviction. And then, when you finally lose that, which you inevitably will lose that contest of eviction, then you wipe out all your debts and rents, and you don't owe anybody anything.

Let me say, there are problems in bankruptcy that this bill has carefully set about to deal with and tried to fix. I am rather proud of it. We have made a lot of progress on dealing with a number of the abuses that exist. But we are not in the business of dealing with health insurance, health care reform. We can't deal with the issue on how we ought to compensate reservists and guardsmen who have been activated.

I will say this with regard to the military issues. My staff has been reviewing the fundamental protections provided to the service men and women under the Soldiers and Sailors Relief Act, originally passed in 1940. It is a tremendous piece of legislation to protect service personnel who are called to active duty from being harassed, abused, or taken advantage of in court.

It remains the law of the land today. It has been strengthened over the past years. When I was in the Army Reserve, I was a U.S. attorney, and sometimes there is a basic officer in the unit, and sometimes in my duties as a jack officer it fell in my lot to brief the personnel on the benefits of it and to represent people who would be abused under the Soldiers and Sailors Relief Act. It has some very good and powerful things in it.

Let me show you how many of the concerns that the Senator has are covered by that act. In 2003, we passed the Service Members Civil Relief Act, which added even more protections. The goal was to financially protect Active-Duty military members, reservists in active Federal service, and National Guard members. The act allows military members to suspend or postpone civil financial obligations during their period of military service. Oftentimes, this can enable them to avoid having to file a bankruptcy.

The information brochure on the Soldiers and Sailors Civil Relief Act, by the Department of Defense, states that it provides an umbrella of protection, and it does. The umbrella of protection created by the act includes these provisions: an interest rate cap of 6 percent on all debts incurred before or during commencement of Active-Duty service. So if you are called to active duty and you entered into a debt that carries a 25-percent interest rate, you can reduce that. It applies to mortgage payments, credit card payments, and car loans. The act provides protection from eviction. It would delay all civil court proceedings, including bankruptcy, until you get back—an automatic delay. If the lawyer says the serviceman is in Iraq—''He has been activated, Your Honor''—this case is stayed. That is what is done immediately. There is no dispute. Foreclosure proceedings are delayed. Divorce proceedings against a service member are stayed.

There is a prohibition on entering of default judgments against Active-Duty military members and the ability to reopen default judgments. In other words, sometimes when the service member is gone, he does not know he has been sued and failed to respond effectively because he is on active duty. The judge is prohibited from taking a default. But if the judge, by mistake or otherwise, enters a default judgment, then that Active-Duty member can have it set aside when he comes back. It is not binding.

The ability to terminate property, residential and automobile leases at will is provided for in this act. In other words, if you enter into a solemn lease agreement for a residence or an automobile and you are called up, all you have to do is write them and say: I have been activated, so I am no longer bound by this lease agreement. It includes the continuation of life insurance of at least $250,000, without requiring premiums to be paid.

The tolling of statutes of limitation—in other words, if you have a lawsuit and you are thinking about filing it and the time for you to file it is about to run and you get called to active duty, that time is extended until you return, and you have time after you return to file any lawsuit because the statute of limitations is tolled. There is temporary relief from mortgage payments, and credit rating protections. In other words, if you are somehow found to be poorly responsive to your debts because you have been activated, you can clear up your credit rating.

There are penalties for landlords and creditors who violate the act and fines of up to $100,000 or imprisonment if they harass a service member contrary to this act while they are serving their country in some distant land. The Supreme Court has even added to the act the ability to help military members in times of financial need by ruling that the act must be read with an eye friendly to those who drop their affairs to answer their country's call. This has been a strong act that provides great protection for our men and women. We all ought to be proud that America has understood this.

Now, let's talk about some of the specific ideas that are in Senator DURBIN's bill. He said it somewhat differently than what he offered in committee. I have not seen amendments until this morning, and I briefly heard his comments and have not had a chance to study it in detail. But he would exempt service members, military Active-Duty members, veterans, and spouses from means tests contained in the bankruptcy bill because a means test will not reflect their real income or real ability to pay debts back. But I don't think that is true.

The bill contains a rebuttal to the means test application when a court finds special circumstances. These are the ones I think we are discussing. A special circumstance that a military member could assert under this bill as it now exists—this bankruptcy bill—would include the fact that their income dropped in recent months due to a call to active duty or there have been excessive expenses arising as a result of being called to active duty. That assertion would keep the means test from applying to the military debt. No special exemption, it would appear, would be necessary for military members on this basis because a call to active duty that causes a drop in income, to me, would be clearly a special circumstance. The bill currently contemplates that, although I think, frankly, we could explicitly state that as a mandatory circumstance.

Second, he asserts that this amendment is necessary to protect military members' homesteads. His amendment would apply to the Federal cap of $125,000 contained in the bill to all service members or allow the service members to choose the exemption level permitted by the State he resided in before becoming a service member. It opens up the homestead compromise we have battled so hard on and dealt with. I don't think it would affect many service members. Many of them live in housing provided by the military. Because the bankruptcy bill requires 2 years of residency in a State before the State homestead exemption can apply, it is highly unlikely that military members will be often covered by it. They move frequently.

The Senator also argues his amendment is necessary to protect service members from predatory loans and high-interest loans. I believe that this concern is well covered by current law. The Soldiers and Sailors Relief Act prevents interest charges greater than 6 percent from being collected on any type of debt owed by an Active-Duty service member. Even debts the service member made before being called to active duty are covered by this interest cap. We have dealt with this issue before. The House had a full debate on it. It was voted down there.

The floor debate on the bankruptcy bill previously, S. 1920, which exempted veterans and others from the means test, was offered by Congresswoman SCHAKOWSKY in opposing the amendment. Chairman SENSENBRENNER pointed out that the means-based test only applies to people with incomes above the median State average. I will repeat that. Anybody who is making above the median income could be impacted by the means test and, therefore, could

be ordered to pay back some of the debt they have lawfully incurred. If they are unlawfully incurred, they cannot be made to pay them back. The court won't make them pay it back.

But they could be made to pay back some of those based on how much their income is above median income. If they are making $200,000 a year, the judge may say they have to pay them all back. If they are making $50,000 and they owe $100,000 in debts, the court may conclude they only can pay back $15,000. That is how this will work out in reality.

He points out that factor and notes that anyone who is below the State median income does not qualify on the means-based test and their bankruptcy petition cannot be tossed out of chapter 7 and put into chapter 13 where some debts are paid back.

Chairman SENSENBRENNER also agrees with my analysis that the issues have been taken care of in the most part since 1940 under the Soldiers and Sailors Relief Act which allows for the staying of legal proceedings against anybody on active duty.

I think he points that out. We have some ideas. He makes another point I will not go into at length. I will say this: I am very concerned about our men and women in uniform. I want to make sure there are no loopholes or gaps in the Soldiers and Sailors Relief Act. I want to make sure this bankruptcy act in no way makes it more difficult for our soldiers than what they have today. I will be glad to look at this amendment and study it more carefully and perhaps offer an alternative that would be more constrained and would deal more directly with the problems. A veteran could be someone who has been in the country, off active duty, for quite a long time. I am not sure that adding all veterans to this exemption would be a good idea particularly. I have some real doubts about that.

Mr. President, I state my opposition to the Durbin amendment. I look forward to analyzing it further, and if there are areas in which we can reach accord, I will be pleased to support that. If there are other needs of our service personnel that could be impacted positively by a bankruptcy reform bill, I am prepared to look at that.

I yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Illinois.

AMENDMENT NO. 16, AS MODIFIED

Mr. DURBIN. Mr. President, I thank the Senator from Alabama for offering to work with me. It would be my wish and hope that we could find a bipartisan agreement on this issue. Either he or someone who is distributing information on the floor has raised I think a very valid issue about our reference to the term ''veteran'' in my amendment. What we were thinking of was a situation where some of our active-duty soldiers who are seriously wounded and transferred to hospitals, such as Walter Reed, find themselves needing to be discharged quickly so they can go into the veterans health system. So we included the term ''veteran'' so it would apply to them as well.

But someone has observed, correctly, by using the term ''veterans'' we have opened this up very broadly. So I send a modification to my amendment to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment, as modified, is as follows:

(Purpose: To protect servicemembers and veterans from means testing in bankruptcy, to disallow certain claims by lenders charging usurious interest rates to servicemembers, and to allow servicemembers to exempt property based on the law of the State of their premilitary residence)

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if—

''(i) the debtor or the debtor's spouse is a servicemember (as defined in section 101 of the Servicemembers Civil Relief Act (50 App. U.S.C. 511(1)));

''(ii) the debtor or the debtor's spouse is a veteran (as defined in section 101(2) of title 38, United States Code) and the indebtedness occurred in whole or in part while they were on active military duty; or

''(iii) the debtor's spouse dies while in military service (as defined in section 101(2) of the Servicemembers Civil Relief Act (50 App. U.S.C. 511(2))).

On page 67, between lines 18 and 19, insert the following:

SEC. 206. DISALLOWANCE OF CLAIMS FILED ON HIGH-COST PAYDAY LOANS MADE TO SERVICEMEMBERS.

(a) 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

(3) by adding at the end the following:

''(10) such claim results from an assignment (including a loan or an agreement to deposit military pay into a joint account from which another person may make withdrawals, except when the assignment is for the benefit of a spouse or dependent of the debtor) of the debtor's right to receive—

''(A) military pay made in violation of section 701(c) of title 37; or

''(B) military pension or disability benefits made in violation of section 5301(a) of title 38; or

''(11) such claim is based on a debt of a servicemember or a dependent of a servicemember that—

''(A) is secured by, or conditioned upon—

''(i) a personal check held for future deposit; or

''(ii) electronic access to a bank account; or

''(B) requires the payment of interest, fees, or other charges that would cause the annual percentage rate (as defined by section 107 of the Truth in Lending Act (15 U.S.C. 1606)) on the obligation to exceed 36 percent.''.

(b) CONFORMING AMENDMENT.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) Notwithstanding paragraphs (2), (4), and (6) of subsection (a), a debt is dischargeable in a case under this title if it is based on an assignment of the debtor's right to receive—

''(1) military pay made in violation of section 701(c) of title 37; or

''(2) military pension or disability benefits made in violation of section 5301(a) of title 38.''.

On page 132, between lines 5 and 6, insert the following:

SEC. 234. PROTECTION OF SERVICEMEMBERS' PROPERTY IN BANKRUPTCY.

(a) IN GENERAL.—Section 522(b) of title 11, United States Code, as amended by section 224, is further amended—

(1) in paragraph (1), as redesignated, by striking ''either paragraph (2) or, in the alternative, paragraph (3) of this subsection'' and inserting ''paragraph (2), (3), or (4)'';

(2) by redesignating paragraph (4), as added by this Act, as paragraph (5); and

(3) by inserting after paragraph (3), as redesignated, the following:

''(4) If the debtor is a servicemember or the dependent of a servicemember, and the date of the filing of the petition is during, or not later than 1 year after, a period of military service by the servicemember, property listed in this paragraph is—

''(A) property that is specified under subsection (d), notwithstanding any State law that prohibits such exemptions; or

''(B) property that the debtor could have exempted if the debtor had been domiciled in the State of the debtor's premilitary residence for a sufficient period to claim the exemptions allowed by that State.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (13A), as added by this Act, the following:

''(13B) 'dependent', with respect to a servicemember, means—

''(A) the servicemember's spouse;

''(B) the servicemember's child (as defined in section 101(4) of title 38); or

''(C) an individual for whom the servicemember provided more than 50 percent of the individual's support during the 180-day period immediately before the petition;'';

(2) by inserting after paragraph (39A), as added by this Act, the following:

''(39B) 'military service' means—

''(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

''(i) active duty (as defined in section 101(d)(1) of title 10); and

''(ii) in the case of a member of the National Guard of the United States, service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

''(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

''(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause;'';

(3) by inserting after paragraph (40B), as added by this Act, the following:

''(40C) 'period of military service' means the period beginning on the date on which a

servicemember enters military service and ending on the date on which the servicemember—

''(A) is released from military service; or

''(B) dies while in military service;''; and

(4) by inserting after paragraph (51D), as added by this Act, the following:

''(51E) 'servicemember' means a member of the uniformed services (as defined in section 101(a)(5) of title 10;''.

On page 191, between lines 11 and 12, insert the following:

SEC. 322A. EXEMPTION FOR SERVICEMEMBERS.

Section 522 of title 11, United States Code, as amended by sections 224, 308, and 322, is further amended by adding at the end the following:

''(r) If the debtor or the spouse of the debtor is a servicemember (as defined in section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511(1))) or a veteran (as defined in section 101(2) of title 38, United States Code) if the indebtedness occurred in whole or in part while they were on active military duty or the spouse of the debtor dies while in military service (as defined in section 101(2) of the Servicemembers Civil Relief Act (50 U.S.C. App. 511(2))), and the debtor or the spouse of the debtor elects to exempt property—

''(1) under subsection (b)(2), the debtor may, in lieu of the exemption provided under subsection (d)(1), exempt the debtor's aggregate interest, not to exceed $75,000 in value, in—

''(A) real property or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor; or

''(2) under subsection (b)(3), and the exemption provided under applicable law that may be applied to such property is for less than $75,000 in value, the debtor may, in lieu of such exemption, exempt the debtor's aggregate interest, not to exceed $75,000 in value, in any property described in subparagraph (A), (B), or (C) of paragraph (1).''.

Mr. DURBIN. Mr. President, I want to explain briefly so the Senator from Alabama understands. We amended the term ''veteran'' in the amendment so it only applies to the situation where the veteran's indebtedness in whole or in part occurred during active duty. We were referring to veterans in general, and one person said: What if you were a veteran of World War II many years ago and your indebtedness had nothing to do with it? We have clarified it with this modification that it would be veterans whose indebtedness was incurred in whole or in part during their term of active duty.

I might also say to my colleague from Alabama, we have a legitimate dispute about the Servicemembers' Civil Relief Act. I would like to join with him to find out which one of us is correct because we have been told that this Civil Relief Act does not apply to debts incurred after military service begins. The most significant limitation is that its primary protections apply only to obligations entered into before a person is called to active duty.

So, ironically, it does not protect military families when they need it the most when additional debt is incurred to help make ends meet during active duty. Rather than belabor this point, I would like to join the Senator from Alabama and get to the bottom of it and find out who is right. It is an important point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. SESSIONS. Mr. President, will the Senator yield for a unanimous consent request?

Mr. FEINGOLD. I yield.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside to allow Senator FEINGOLD to offer a first-degree amendment. Before the Chair rules, I indicate that it is my expectation to offer a second-degree amendment to the Durbin amendment or work out an agreement for two side-by-side first-degree amendments. While we are working out that agreement, we are prepared to go forward with the discussion on the Feingold amendment, with the understanding that we would then return and debate the Sessions amendment and the Durbin amendment and dispose of those matters first.

Mr. DURBIN. Reserving the right to object, and I do not plan to object, it is my understanding that my amendment is pending.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. So that any amendment filed subsequently would follow it for consideration.

The PRESIDING OFFICER. If the Feingold amendment is offered, it will be pending, but the understanding of the Chair of what is in the unanimous consent request is that the amendment of the Senator from Illinois would be considered when the Senator from Alabama is ready to second-degree that amendment.

Mr. DURBIN. Thank you, Mr. President. I withdraw my reservation.

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

The Senator from Wisconsin.

AMENDMENT NO. 17

Mr. FEINGOLD. Mr. President, I have an amendment that I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 17.

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

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

The amendment is as follows:

(Purpose: To provide a homestead floor for the elderly)

On page 191, between lines 11 and 12, insert the following:

SEC. 322A. EXEMPTION FOR THE ELDERLY.

Section 522 of title 11, United States Code, as amended by sections 224, 308, and 322, is amended by adding at the end the following:

''(r) For a debtor whose age is 62 or older on the date of the filing of the petition, if the debtor elects to exempt property—

''(1) under subsection (b)(2), then in lieu of the exemption provided under subsection (d)(1), the debtor may elect to exempt the debtor's aggregate interest, not to exceed $75,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor; or

''(2) under subsection (b)(3), then if the exemption provided under applicable law that may be applied to such property is for less than $75,000 in value, the debtor may elect in lieu of such exemption to exempt the debtor's aggregate interest, not to exceed $75,000 in value, in any such real or personal property, cooperative, or burial plot.''.

Mr. FEINGOLD. Mr. President, I am very concerned about the impact of this bankruptcy bill on our senior citizens. Older Americans, far more than the rest of us, often face crushing debt burdens because of the high cost of prescription drugs and other medical expenses, and they need the safety net of bankruptcy relief to deal with their resulting financial troubles. In fact, Americans over 65 are now the fastest growing age group filing for bankruptcy protection.

Older Americans, far more than the rest of us, are often homeowners who have paid off their mortgages over decades of hard work. Their home equity often represents nearly their entire life savings, and their home is often their only significant asset. It is critical we ensure these older Americans are not forced to give up their hard-earned homes—the homes where they have raised their children and planned to spend their retirement—in order to seek the benefit of our bankruptcy system. These are not just pieces of real estate to these people; these are their havens, their sanctuaries, their life's work. Yet the bankruptcy law in its current form does not adequately protect older Americans from a horrible dilemma.

For older homeowners, the homestead exemption in the bankruptcy laws is what should protect them from having to make the horrible decision to give up their homes in order to seek bankruptcy relief. This exemption legally protects the homestead—a personal residence—or some portion of its value from the claims of most creditors. It should mean that senior citizens faced with bankruptcy because they cannot pay off their massive medical expenses are allowed to keep their homes.

In too many cases, this homestead exemption is woefully inadequate. The value of this exemption varies widely from State to State. While Federal law currently creates an alternative homestead exemption of just under $20,000,

that low amount is just that, an alternative. Each State gets to decide whether it will allow its debtors to rely on this Federal alternative, and many do not. As a result, some States allow a much higher exemption, but many have a much lower exemption.

In States such as Florida and Texas, there is a homestead exemption with an unlimited dollar value, meaning that any money invested in a home cannot be obtained by creditors. I should note, of course, that this creates other problems, which I will address in a few minutes. But other States allow a very limited value homestead exemption. In many States, the amount of equity a homeowner can protect in bankruptcy has lagged far behind the dramatic rise in home values in recent years. For example, in the State of Ohio, the homestead exemption is only $5,000, and in the Presiding Officer's State of North Carolina, the homestead exemption is $10,000. In this day and age, those paltry exemptions will do no good. We obviously have a problem, and it is hitting our older friends and family members the hardest.

Think about it: In these low homestead exemption States, even indigent elderly homeowners who own a home free and clear worth only $30,000 or $40,000 cannot file for chapter 7 bankruptcy without losing their home. And they may not be able to file a chapter 13 case because they cannot afford to pay creditors the value of their home equity that is not exempt, as required by that chapter. Many elderly homeowners live solely on Social Security benefits, often no more than $800 to $1,000 per month. This is enough to subsist in their paid-off homes, while still paying taxes, utilities and other basic living expenses. But if they lose their homes, they will not be able to rent a decent place to live. Effectively, this means these older homeowners have no bankruptcy relief available to them at all. We have to address this gross inequity before we pass this bill. My amendment would create a uniform federal floor for homestead exemptions of $75,000, applicable only to bankruptcy debtors over the age of 62, protecting the lower- and middle-class senior citizens who need it most.

I will give an example that illustrates why it is so important that we fix this problem and fix it now. Let me tell my colleagues about Mary Bobbit. Mary Bobbit is a 70-year-old widow who lives in North Carolina, where the homestead exemption is only $10,000. According to a local news story, she recently lost her husband to cancer, a battle that left her with more than $175,000 in unpaid medical bills. Her only remaining asset is the home that her family built themselves 26 years ago, a home that she paid off just last year. And now she is faced with a horrible dilemma, because if she files for bankruptcy in North Carolina, she will lose the home that she and her husband worked so hard to build and pay for.

As Mary Bobbit's story shows, this is not a hypothetical problem. Despite the fact that older Americans tend to own their own homes and have greater financial experience compared to the rest of us, they are the fastest growing age group in bankruptcy. In the 1990s, the number of Americans 65 and older filing for bankruptcy tripled. Why is that?

Well, older Americans simply do not have the same resources for their retirement years that they used to. They live on fixed incomes that are not keeping up with rising costs. Fewer and fewer Americans have pensions, and many Americans who are just hitting retirement age lost much of their retirement savings when the stock market bubble burst a few years ago.

But one of the biggest reasons that older Americans go into bankruptcy is the inability to pay medical expenses. Between prescription drug costs and the costs of hospitalization, medical expenses can add up quickly for someone on a fixed income. Medicare simply is not providing the help that many of them need. In fact, medical expenses are the cause of more than half of all bankruptcies filed by debtors over the age of 50.

Another big factor in the rising bankruptcy rate of older Americans is job loss. People who are nearing retirement age and lose their jobs due to mergers and down-sizing can find it very difficult to find a new job. If you are in your late 50s and lose a job, just try to find someone to hire you at the same wages you were making before. It is not easy, and the results can be devastating.

Job loss is also a problem for the increasing percentage of older Americans who are finding that they have to return to work after retirement in order to make ends meet, giving up the American dream of security and leisure in retirement. In fact, nearly half of seniors say they plan to continue working during retirement because they cannot survive financially otherwise. Senior citizens are reporting that if they lose even a low-paying, part-time job at places like McDonald's or Wal-Mart, they may no longer be able to afford their basic living expenses.

Yet another disturbing trend is that the credit card debt of Americans over age 65 increased dramatically in the 1990s, in part thanks to the fact that they can now charge many prescription drug and other medical expenses. I am very disturbed by the idea that seniors would end up having to pay credit card interest rates of even 20 percent in order to pay for the medical treatment they need.

Older Americans are increasingly the victims of unscrupulous predatory lenders. According to the AARP, elderly Americans are three times more likely to be targeted. In fact, according to a Harvard study, nearly one in five older Americans in bankruptcy filed their petition at least in part to avoid constant, harassing, 24-hour-a-day collection calls or other actions.

All of this rather sad picture makes one thing very clear. We are not talking about people who were reckless with their spending and think they can use or manipulate the bankruptcy laws to get out of it. We are talking about responsible people who have worked toward retirement their whole lives, yet whether because of devastating medical costs, job loss, or some other tragedy, find themselves in a financial emergency and are unable to pay their debts. These people turn to the bankruptcy system only as a last resort. They should not also be forced to give up their homes for doing so.

We cannot allow this to continue. We have to fix this problem.

I believe my amendment offers a solution to help them. Federal law should protect the elderly in States where the homestead exemption is very low. The optional Federal bankruptcy exemptions allow a homeowner to protect only a little under $20,000, and even then States can simply ignore that Federal alternative and require their debtors to use the State exemptions, which are often much lower. My amendment would create a uniform Federal floor for homestead exemptions of $75,000, applicable only to bankruptcy debtors over the age of 62. States could no longer impose lower exemptions on their seniors. This would permit senior homeowners to file for bankruptcy without losing what is usually the only significant asset they have: their homes. And if my amendment were adopted, the U.S. Congress would not be the first to acknowledge that this is a problem for the elderly. Both California and Maine have recognized that elderly debtors deserve increased homestead protection. California recently raised the exemption for the elderly to $150,000, and Maine has an exemption for debtors over 60 of $70,000. It is about time we caught up with these forward-thinking State legislators and gave our seniors the protection they need.

I do want to briefly address the very serious problem that I alluded to earlier, which is that some wealthy Americans have exploited the unlimited homestead exemption available in certain States. This certainly is not a new issue; we have had years of debate over the unlimited homestead exemptions in some states that permit wealthy people to file bankruptcy and retain their mansions. One frequently cited example of abuse is Bowie Kuhn, the former baseball commissioner whose law firm went into bankruptcy. After creditors seized his home in the Hamptons and were about to attach his mansion in New Jersey, Mr. Kuhn acquired

a multi-million dollar home in Florida and protected it from his creditors. Florida, of course, is one of the States with an unlimited homestead exemption. Section 322 of the bankruptcy bill attempts to address this problem, but does so only for a relatively small number of people. It treats the poor and middle class harshly while still letting some wealthy debtors, who are clearly abusing the system, shelter millions of dollars. I agree with my senior colleague from Wisconsin, Senator KOHL, and the distinguished Senator from Alabama that this loophole must be addressed. Unfortunately, I do not think the homestead exemption limitation in this bill does the job as well as it could, but I am afraid we will have to turn to that issue on another day.

My amendment addresses the flip side of the homestead issue. It has no effect whatsoever on the homestead provision agreed to by Senator KOHL in the 2002 conference, which remains in this new bill. Rather than being concerned with the relatively small number of high-profile wealthy abusers of the system, my amendment is aimed at the thousands upon thousands of elderly homeowners who are being squeezed by medical bills and rising home prices into an untenable position.

Let's be honest. Despite all the investment opportunities available to many in this country, for a very large number of seniors, the only retirement plan they have is this: pay off your house, and live on Social Security. People in that situation can survive, but not if they get hit with a financial emergency, usually a severe medical problem, and live in a State that has a low homestead exemption. We need to help them, and we need to do it now.

The bankruptcy system should provide a safety net for families truly in need of relief. This senior homeowner protection amendment is a reasonable solution to a growing problem. I strongly urge my colleagues to support this amendment, and I ask unanimous consent that a letter of support for this amendment from the AARP be printed in the RECORD.

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

AARP,
March 1, 2005.

Hon. RUSSELL D. FEINGOLD,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR FEINGOLD: Debate on S. 256, the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2005'', has begun on the floor of the Senate and we understand that you are prepared to offer an amendment to S. 256 that creates a uniform federal floor for homestead exemptions of $75,000 that is applicable only to bankruptcy debtors over the age of 62. AARP supports this amendment, and urges the Senate to adopt it as part of the legislation to help safeguard older Americans from losing their homes when they find it necessary to file for bankruptcy.

Individuals and families that are near or of retirement age, and confronted with the unavoidable choice of filing for bankruptcy, very often find themselves in an ever tightening vice: at the end of their working careers, with little or no time or opportunity to recover financially, and with very few assets. Experts cite the financial problems of older Americans as being based on an array of factors, among them: job loss, medical expenses, death of a spouse, divorce, financial support for children and grandchildren and less retirement income. But it is job loss and medical expenses that top the list of reasons for indebtedness and bankruptcy.

For millions of older persons, their homes represent their principal financial asset and their personal independence. Today, the federal bankruptcy exemptions allow a homeowner to protect only a little under $20,000 in home equity, and many states allow even less. The dramatic increases in home prices over recent years have caused a special problem for older homeowners who need bankruptcy relief from overwhelming debt that is often due to large medical expenses. The amount of equity a homeowner can protect in bankruptcy has not kept up with the rise in home prices, so that even an indigent elderly homeowner who owns a home worth only $30,000 or $40,000 cannot file a chapter 7 bankruptcy without losing that home and cannot file a chapter 13 case because he cannot afford to pay creditors the value of the equity that is not exempt, as required by that chapter.

The irony of the situation is that under existing law affluent debtors in a number of states are allowed to keep homes of unlimited value. Should we punish the remaining older Americans twice—for having to file for personal bankruptcy under either Chapter 7 or 13, and to lose what often is their only remaining retirement asset?

We urge Members of the Senate to provide this modest bankruptcy relief for older Americans. If you have any questions, please do not hesitate to contact me, or call Roy Green of our Federal Affairs staff at 202–434–3800.

Sincerely,

DAVID CERTNER,
Director, Federal Affairs.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, Senator FEINGOLD has been very alert to the issues of this bill, and he has contributed to this legislation. We have agreed some and disagreed some. We have had a lot of fun discussing the issues, and I know I have learned a good bit from it.

Let me say, frankly, where we are on homestead. That has been an intensely debated matter for 8 years. We have reached a compromise on how to handle homestead, and rather than cracking down on the abuses of those people who move to States with unlimited homesteads, we basically have agreed as a Senate that the States get to decide how much should be exempted under the bankruptcy law. In other words, each State gets to decide.

States need to begin to think about what their limits are and whether they need to change them. The Senator noted that California has raised its exemption for a home. Others will probably do the same, and some have already done so.

It threatens this legislation in a fundamental way if we now go in and say we are going to override the State laws about what the homestead exemption should be. I do not think we should do that. I think it could help kill this bill. I know Senator FEINGOLD is not a fan of it, and I do not think we should do this.

With regard to the abuses in the homestead legislation, we did put in language that cracked down on the ability of someone to move to a State that has a more favorable law and place an unlimited amount of equity into a very expensive home and file bankruptcy and be able to keep that equity which they could then reconvert to cash.

I think that is a problem. I would like to have seen this go farther, but we didn't make that, we didn't reach that bridge. It was a bridge too far. We failed to do that. It is one item in the bill I think we could have done better with, frankly.

I will say this. The exemption, fundamentally, should apply to everyone, 62 above or below, as far as I can see. A young family, I don't know why they would not need the same protections a senior would. Right now they all get the same. It is whatever the State decides.

So I would have to rise in objection to the Feingold amendment on the basis that it is contrary to the State prerogatives in this area, the State deference that we have given repeatedly over the years. It is contrary to that. It would be a Federal imposition of a homestead floor and it is contrary to a very fragile agreement we have reached in this body over what the homestead exemption should be. It could, in fact, jeopardize the successful passage of the bill.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Let me thank the Senator from Alabama, not only for his willingness to engage on the merits of this amendment, but for his willingness to engage on a number of difficult subjects, whether it be the homestead exemption or landlord-tenant issues. When the Senate takes up legislation, we typically start with a good discussion in committee, make some progress toward agreement, and then come to the floor. And when we go to the conference committee between the Houses, we also sometimes manage to come up with an agreement.

It is regrettable, through no fault of the Senator from Alabama, that in this case we are starting this process on the floor. I think had these amendments been taken seriously in committee, we could have found some common ground and not had to take up the time of the whole body, but this is where we are.

I do believe this amendment is a reasonable extension of something in which the Senator from Alabama is already involved. His principal concern

about this amendment is apparently that we would be overriding State law in the area of homestead exemptions. But the Senator, as he has indicated, has been a party to an agreement that would do exactly that when it comes to the high end of homestead exemptions. It is not as if I picked a new area where I am suggesting that State laws are inadequate. What I am arguing is that if we are going to be dealing with some of these outrageous abuses of the bankruptcy system perpetrated by the very wealthy, let's also take the opportunity to make sure that the average senior citizen in this country, who desperately wants to protect their home and has to go into bankruptcy, has some minimum protection.

To me, this is not an extreme proposal. We only pass these bankruptcy bills once in a great while. As I understand it, the last one was passed in 1978. There clearly is a trend across the country in places like Maine and California, where legislators are recognizing that there is a special, severe problem for many of our seniors. I agree with the Senator from Alabama, it would be terrific if we could extend this protection to everybody. Perhaps that is something we should consider. But there is a particular problem when it comes to seniors, who have no way of making money anymore, and who are beset with unexpected medical bills, whether it be prescription medicine or some other bills. They are stuck. They don't have any other way to save their home. This problem just cries out for a minimum Federal standard of the kind this amendment proposes.

I hope my colleagues consider this amendment. It is offered in good faith. It is not something that should in any way upend the overall bill because we have already engaged in a discussion about the changes that need to be made at the high end of the homestead exemption, and the bill already includes such a provision. So I ask my colleagues to give an independent and fresh look at this, given how important it is to senior constituents in every State of the Union.

I yield the floor.

RECESS

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

Thereupon, the Senate, at 12:30 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. In my capacity as a Senator from Ohio, I suggest the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. 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 West Virginia.

UNLIMITED DEBATE IN THE SENATE

Mr. BYRD. Mr. President, in 1939, one of the most famous American movies of all time, ''Mr. Smith Goes to Washington,'' hit the box office. Initially received with a combination of lavish praise and angry blasts, the film went on to win numerous awards and to inspire millions around the globe. The director, the legendary Frank Capra, in his autobiography, ''Frank Capra: The Name Above the Title,'' cites this moving review of the film, appearing in the Hollywood Reporter, November 4, 1942:

> Frank Capra's ''Mr. Smith Goes to Washington,'' chosen by French Theaters as the final English language film to be shown before the recent Nazi-ordered countrywide ban on American and British films went into effect, was roundly cheered. . . .
>
> Storms of spontaneous applause broke out at the sequence when, under the Abraham Lincoln monument in the Capital, the word, ''Liberty,'' appeared on the screen and the Stars and Stripes began fluttering over the head of the great Emancipator in the cause of liberty.
>
> Similarly, cheers and acclamation punctuated the famous speech of the young senator on man's rights and dignity. ''It was . . . as though the joys, suffering, love and hatred, the hopes and wishes of an entire people who value freedom above everything, found expression for the last time. . . .''

For those who may not have seen it, ''Mr. Smith'' is the fictional story of one young Senator's crusade against forces of corruption and his lengthy filibuster—his lengthy filibuster—for the values he holds dear.

My, how things have changed. These days, Mr. Smith would be called an obstructionist. Rumor has it that there is a plot afoot to curtail the right of extended debate in this hallowed Chamber, not in accordance with its rules, mind you, but by fiat from the Chair—fiat from the Chair.

The so-called nuclear option—hear me—the so-called nuclear option—this morning I asked a man, What does nuclear option mean to you? He said: Oh, you mean with Iran? I was at the hospital a few days ago with my wife, and I asked a doctor, What does the nuclear option mean to you? He said: Well, that sounds like we're getting ready to drop some device, some atomic device on North Korea.

Well, the so-called nuclear option purports to be directed solely at the Senate's advice and consent prerogatives regarding Federal judges. But the claim that no right exists to filibuster judges aims an arrow straight at the heart of the Senate's long tradition of unlimited debate.

The Framers of the Constitution envisioned the Senate as a kind of executive council, a small body of legislators, featuring longer terms, designed to insulate Members from the passions of the day.

The Senate was to serve as a check on the executive branch, particularly in the areas of appointments and treaties, where, under the Constitution, the Senate passes judgment absent the House of Representatives.

James Madison wanted to grant the Senate the power to select judicial appointees with the Executive relegated to the sidelines. But a compromise brought the present arrangement: appointees selected by the Executive, with the advice and consent of the Senate confirmed. Note—hear me again—note that nowhere in the Constitution of the United States is a vote on appointments mandated.

When it comes to the Senate, numbers can deceive. The Senate was never intended to be a majoritarian body. That was the role of the House of Representatives, with its membership based on the populations of States. The Great Compromise of July 16, 1787, satisfied the need for smaller States to have equal status in one House of Congress, the Senate. The Senate, with its two Members per State, regardless of population, is, then, the forum of the States.

Indeed, in the last Congress—get this—in the last Congress 52 Members, a majority, representing the 26 smallest States, accounted for just 17.06 percent of the U.S. population. Let me say that again. Fifty-two Members, a majority, representing the 26 smallest States—two Senators per State—accounted for just 17.06 percent of the U.S. population. In other words, a majority in the Senate does not necessarily represent a majority of the population of the United States.

The Senate is intended for deliberation. The Senate is intended for deliberation, not point scoring. The Senate is a place designed, from its inception, as expressive of minority views. Even 60 Senators, the number required under Senate rule XXII for cloture, would represent just 24 percent of the population if they happened to all hail from the 30 smallest States.

So you can see what it means to the smallest States in these United States to be able to stand on this floor and debate, to their utmost, until their feet will no longer hold them, and their lungs of brass will no longer speak, in behalf of their States, in behalf of a minority, in behalf of an issue that affects vitally their constituents.

Unfettered debate, the right to be heard at length, is the means by which we perpetuate the equality of the States. In fact, it was 1917, before any curtailing of debate was attempted, which means that from 1789 to 1917, there were 129 years; in other words, it means also that from 1806 to 1917, some 111 years, the Senate rejected any limits to debate. Democracy flourished along with the filibuster. The first actual cloture rule in 1917 was enacted in