Some of us remember the vote we had here with respect to climate change and the Kyoto Protocol—the Byrd/Hagel Resolution. I think it was 95–0. The administration asked for our opinion. We are a body of advice and consent. We gave our advice. I think that vote pretty much indicates a lack of consent. That particular proposal exempts the largest emitters of greenhouse gases, China and India.

In conclusion, the bottom line is there is a clear contrast between the candidates on the subject of energy policy. The Vice President wants to raise prices to limit supply of fossil energy which makes up currently over 80 percent of our energy needs. We wish it were less, but that is the reality. He wants to replace it with solar, wind, biomass—technologies that are promising but they are simply not available or affordable at this time.

Governor Bush will expand domestic production of oil and natural gas, ensuring affordable and secure supplies, reducing energy costs, and keeping inflation at bay. Governor Bush will use the energy of today to yield cleaner, more affordable energy sources of tomorrow.

The choice for consumers is very clear.

Let me leave you with one thought with regard to our foreign policy. Currently we are importing about 600,000 barrels a day from Iraq. I know the occupant of the chair recalls in 1991 and 1992 when we fought a war, the Persian Gulf war, we had 147 American service personnel who gave their lives in that war, with 427 wounded; we had 23 taken prisoner. How quickly we forget.

Now we are over there enforcing, if you will, an aerial blockade, a no-fly zone. We have flown over 300,000 sorties, individual missions, enforcing the no-fly zone over Iraq. We have bombed; we have fired; we have intercepted. Fortunately, we have not suffered a loss. But what kind of foreign policy is it where we buy his oil, put it in our airplanes, and go over and bomb him? I leave you with that thought, and I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The distinguished Senator from Iowa is recognized.

BANKRUPTCY

Mr. GRASSLEY. Mr. President, we had an opportunity to listen to 2 hours of debate and speeches from some on the other side of the aisle earlier this afternoon trashing a piece of legislation and the process connected with that legislation that originally passed the Senate 83–14 earlier this year.

I have heard the Senator from Minnesota and others complain about the process of getting the bankruptcy bill to the floor. It seemed to me, as I listened to what he said that it is almost an unbelievable thing for him to say that. The Senate passed the bankruptcy bill after weeks of debate and after disposing of literally hundreds of amendments. The Senator from Minnesota objected to going to the conference committee in the regular order. We tried to do things in the regular way, but he was one of those Senators who blocked our efforts to get to conference.

I think the speeches we have heard this afternoon, particularly from the Senator from Minnesota, are misleading. It is very misleading for Senator WELLSTONE to pretend he is not the reason for this bill not moving in the regular way and then to find fault with the unconventional way in which we finally did it.

Also, looking at that process, there are few conference committees around here that have an equal number of Democrats and Republicans. This conference committee had three Democrats and three Republicans. So obviously Democrats had to sign the conference report, or we would not even have it before us. But that is the way this process has been—not only this year but last year and the year before and the year before.

We have been trying to bring about badly needed bankruptcy reform. It has been done in a bipartisan way. The best evidence of that bipartisanship, both from the standpoint of substance and the standpoint of the process, is the 83–14 vote by which the original bill passed the Senate and Democrats signing the conference report that is now before us. So I am glad we finally have a chance to get to debate on the merits of the bankruptcy reform conference report.

Today is Halloween. That is an appropriate day to take the bill up because of our liberal friends who have tried to dress the bankruptcy bill in a scary costume in a tired effort to frighten the American people for crass political purposes. The fact is, the bankruptcy reform bill we are going to vote on tomorrow will do a lot of good for the American people and for the economy.

Remember, we are talking about 1.4 million bankruptcies. Remember, we are talking about a very dramatic explosion of bankruptcies just in the last 6 or 7 years. Remember, the last time we had bankruptcy reform, there were about 300 thousand bankruptcies filed per year.

That is up to 1.4 million. It is a cost to the economy for every working family in America of paying $400 per year more for goods and services because somebody else is not paying their debt.

I want to summarize a few things that this bill will do that my colleagues may not know about as a result of the disinformation campaign waged by our liberal opponents.

Right now, for instance, farmers in my State of Iowa, and for that matter in Minnesota and all across the country, have no protections against foreclosures and forced auctions. That is because chapter 12 of the bankruptcy code, which gives essential protections for family farmers, expired in June of this year.

Why did chapter 12 expire leaving farmers without a last-ditch safety net? The answer is that chapter 12 ceased to exist because the Senator from Minnesota blocked us from proceeding on this bankruptcy bill we have before us.

The bankruptcy bill will restore chapter 12 on a permanent basis. Never again will Iowa farmers or even Minnesota farmers be left with no defense against foreclosures and forced auctions. Congress will fail in its basic responsibilities to the American farmer if we fail to restore chapter 12 as a permanent part of the bankruptcy code.

The bankruptcy bill does more for farmers than just make protections for farmers permanent. The bankruptcy bill enhances these protections and makes more Iowa farmers, more American farmers, and even more Minnesota farmers eligible for chapter 12. The bankruptcy bill lets farmers in bankruptcy avoid capital gains taxes. This will free up resources that would have otherwise been forced to go to the Federal Treasury, that would otherwise go down the black hole of the IRS, to be invested in farming operations.

We have a real choice. The Senate can vote as the Senator from Minnesota wants us to vote and the Senate can kill this bill, or we can stand up for American farmers and Minnesota farmers. We can do our duty and make sure that family farms are not gobbled up by giant corporate farms. We can give our farmers a fighting chance. I hope the Senate will stand up for our farmers. I hope the Senate does not give in to the bankruptcy establishment that has decided to fight bankruptcy reform no matter who gets hurt, including the Iowa farmer, the Minnesota farmer—the American farmer.

What else is in this conference report? The bankruptcy bill will give badly needed protection for patients in bankrupt hospitals and nursing homes. About 10 percent of the nursing homes in America are in bankruptcy, so this is a real problem for senior citizens of America. The Senate protected these people by unanimously adopting an amendment which I offered. Again, my colleagues may be unaware of the importance of this provision because the opponents of bankruptcy reform do not want us to realize what killing the bankruptcy reform bill will really do for those people who are in bankrupt nursing homes.

I had hearings on patients in bankrupt nursing homes. As my colleagues know, Congress is trying to put more money into nursing homes through the Medicare replenishment bill. Because we have so many nursing homes that are in bankruptcy, the potential for harm is very real.

Through the hearing process in committee, I learned of a situation in California where a bankruptcy trustee simply showed up at a nursing home on a Friday evening and evicted the residents. The bankruptcy trustee did not provide any notice that this was going

to happen. He literally put these frail, elderly people out into the street and changed the locks so they could not get back into the nursing home. The bankruptcy bill that we will vote on tomorrow will prevent this from ever happening again. If we do not stand up and say that the residents of nursing homes cannot just be thrown out into the street, then Congress will have failed in its duty to the senior citizens of America.

Again, we have a choice: We can vote this bill down and tell nursing home residents and their families that they can just go fly a kite. I hope the Senate is better than that. I hope the Senate stands for nursing home residents and not for inside-Washington liberal special interest groups that are trying to make a case against this bill but just cannot make a case against the bill. We have not heard them talking about helping farmers through chapter 12. We have not heard them talk about helping nursing home residents through the provisions that are in the Patients' Bill of Rights for nursing home residents.

There is more to this bill. The bankruptcy reform bill contains particular provisions advocated by Federal Reserve Chairman Alan Greenspan and by Treasury Secretary Larry Summers. I hope the Senator from Minnesota takes note of those two people being appointed by the President of the United States, Larry Summers being a member of this administration as Secretary of the Treasury, to whom some from the other side of the aisle ought to listen.

These provisions will strengthen our financial markets and lessen the possibility of domino-style collapses in the financial sector of our economy. According to both Chairman Greenspan and Secretary Summers, these provisions will address significant threats to our prosperity, the very prosperity that their candidate for President is out talking about every day saying it ought to be protected.

Yet again, we have a choice: We can strengthen our financial markets by passing this bill, or we can side with the liberal establishment and fight reform, no matter what the cost is to our society, our economy, the farmers, or the people in nursing homes.

The American people want us to strengthen the economy, not turn a deaf ear to the pleas for help from the Chairman of the Federal Reserve Board and from the Treasury Secretary. I hope the Senate decides to vote to safeguard our prosperity, not put it at risk.

The Senator from Minnesota said he wanted us to learn more about the bankruptcy bill. I do, too. Once we look at this bill in its totality I am confident that the Members of this body will see this is a responsible approach, that we will then do the responsible thing: We will vote for cloture, and then we will also do final passage.

There is an issue about how the bankruptcy bill will impact people with high medical expenses. Earlier this year, I addressed this very issue, but I want to reassure my colleagues who have remaining questions about this that we have taken care of the problems they have legitimately raised. I do not find fault with their raising them; I only find fault with the fact that we have taken care of them and they have not found it out yet. Before the vote tomorrow morning, I want them to find it out. I want the Senator from Minnesota and I want my friend and colleague from the State of Iowa who raised this issue to be aware of it as well.

My friend from Iowa was quoted in the Des Moines Register Sunday as saying about this bill: I am not for it. I think it's a bad bill. He talked with bankruptcy lawyers who said that it will hit hardest those who rack up big bills due to medical problems.

As to the Time magazine article that was referred to earlier by the Senator from Minnesota which alleged that medical expenses drove some of the families profiled into bankruptcy, I would just say that this is flat out wrong.

To the extent any person in bankruptcy has medical expenses, the bankruptcy bill deals with this issue in two ways.

The General Accounting Office to look at the provisions of this bill from the point of view of medical expenses. You can see from this report that came from the General Accounting Office that all medical expenses that are deducted in determining whether you have the ability to go to chapter 7 or chapter 13. The bill is very clear health care expenses are covered because of ''other necessary expenses'' include such expenses as charitable contributions, child care, dependent care, health care, payroll deductions, life insurance, et cetera. All of these are used in determining your ability to repay your debts.

So anybody who comes to the floor of the Senate and says that we do not take medical costs into consideration in determining this—those colleagues have not read the bill.

There is one additional thing. Somebody can make a case that this does not take care of all of the instances. I do not know how much clearer it can be. But we still have application to the bankruptcy judge, under special circumstances, to argue any case you want to of something that should be taken into consideration in your ability to repay debt. Medical expenses, obviously, fall into that category if this provision is not adequate. But I do not know how much clearer it can be than when you say medical expenses are things that are deductible in making your determination of ability to pay.

Several Senators have also, today, made reference to the issue of whether we need to modify the bankruptcy laws to prevent violent abortion protesters from discharging their debts in bankruptcy court. Now the fact is, our current law already prevents this from happening.

I am releasing today a memo to me from the nonpartisan Congressional Research Service that says, without a doubt, no abortion protester has ever, ever gotten away with using bankruptcy as a shield. So I hope my colleagues listen to this nonpartisan source and not the partisan political statements that were made yesterday on the Senate floor in regard to this.

I want to put this in the RECORD, Mr. President, so I know that this is clearly stated. I ask unanimous consent that this memo be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, October 26, 2000.

MEMORANDUM

To: Hon. Charles Grassley,
From: Robin Jeweler, Legislative Attorney, American Law Division.
Subject: Westlaw/LEXIS survey of bankruptcy cases under 11 U.S.C. §523.

This confirms our phone conversation of October 25, 2000. You requested a comprehensive online survey of reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters.

The only reported decision identified by the search is Buffalo Gyn Womenservices, Inc. v. Behn (In re Behn), 242 B.R. 229 (Bankr. W.D.N.Y. 1999). In this case, the bankruptcy court held that a debtor's previously incurred civil sanctions for violation of a temporary restraining order (TRO) creating a buffer zone outside the premises of an abortion service provider was nondischargeable under 11 U.S.C. §523(a)(6), which excepts claims for ''willful and malicious'' injury. The court surveyed the extent and somewhat discrepant standards for finding ''willful and malicious'' conduct articulated by three federal circuit courts of appeals. It granted the plaintiff's motion for summary judgment and denied the debtor/defendant's motion to retry the matter before the bankruptcy court. Specifically, the court held:

''[W]hen a court of the United States issued an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the question of volition and violation) in the issuing court) are ipso factor the result of a 'willful and malicious injury.' ''—242 B.R. at 238.

Mr. GRASSLEY. In other words, once again, just to make it very clear the Congressional Research Service has searched every known case, and I have here, as my colleagues can read, the only case that is available, in which the result is that an abortion protester wasn't able to discharge his debts. The court was very clear that they were not able to get a discharge for that purpose.

Mr. President, I see my friend from New Jersey, who is on the other side of the aisle but very supportive of our legislation, who needs time because he supports this legislation from our side of the aisle. So I am going to quit at this point. I ask if I can have the floor back after he has finished.

The PRESIDING OFFICER. Is there objection?

Mr. GRASSLEY. I ask unanimous consent to do that, so I can defer to the Senator from New Jersey right now.

Mr. ENZI. Reserving the right to object——

Mr. GRASSLEY. I will ask this way, that when the Senator from New Jersey has finished, to give the Senator from Wyoming the floor, and then me, because I want to continue presenting our case on the bankruptcy reform.

The PRESIDING OFFICER. Is the Senator from Iowa yielding time to the Senator from New Jersey? The Republicans control the time.

Mr. GRASSLEY. Yes. I intend to do that.

The PRESIDING OFFICER. How much time——

Mr. GRASSLEY. How much time does the Senator need?

Mr. TORRICELLI. Twelve minutes.

Mr. GRASSLEY. Twelve minutes.

The PRESIDING OFFICER. Without objection, 12 minutes are yielded to the Senator from New Jersey.

Mr. TORRICELLI. I thank the Chair.

BANKRUPTCY

Mr. TORRICELLI. Mr. President, for the last 4 years, my colleague, Senator GRASSLEY, has shown extraordinary patience and considerable leadership in bringing this institution towards fundamental and fair reform of the bankruptcy laws. It has not always been a popular fight, but it is unquestionably the right thing to do for consumers, for business, and perhaps most importantly, for small businesses, family-owned businesses, that are often victimized by abusers.

Everyone, I think, generally agrees, within reason, that there is a need for bankruptcy reform. The question, of course, has been how to do that. In the last Congress, we came extremely close to bipartisan reform. Having come so close in the 105th Congress, I inherited the role as the ranking member of the subcommittee with jurisdiction, and I felt some optimism that we could succeed.

Since that time, working with Senator GRASSLEY, I think we have dealt with most of the critical issues. He has been extremely cooperative. Indeed, Members on both sides of the aisle have had suggestions, changes, most of which have been incorporated. Overwhelmingly, Senators who had problems with the bill and individual changes have been accommodated in both parties.

So today we bring to the floor the culmination of 2 years of work, of refining something that had been worked on for the 2 years before that—4 years—with many Members of the institution, and overwhelmingly Members who have voted for it.

Is it perfect? No. Were I writing bankruptcy reform by myself, there would be differences. But none of us writes any bill by ourselves.

The critical question is: Is it fair and is it a balanced bill? Unequivocally, the answer to that question is yes.

Will it improve the functioning of the bankruptcy system without doing injury to vulnerable Americans who have need, legitimate need, of bankruptcy protections? Absolutely, yes.

For those reasons, this bill deserves and, indeed, clearly has overwhelming bipartisan support in the Senate.

What has fueled this broad and deep support among Democrats and Republicans in the House and the Senate have been the facts, an overwhelming misuse and expansion of bankruptcy. In 1998 alone, 1.4 million Americans sought bankruptcy protection, a 20-percent increase since 1996, during the greatest economic expansion in American history, with record employment, job growth, income growth, a 20-percent increase in bankruptcies, more staggering, since 1980, a 350-percent increase in the use of bankruptcy laws.

It is estimated that 70 percent of those filings were done in chapter 7, which provides relief from most unsecured debt. Conversely, just 30 percent of those petitions were filed under chapter 13, which requires a repayment plan.

The result of these abuses of the system has meant that just 30 percent of petitions under chapter 13 require a repayment plan. Overwhelmingly, people have discovered, contrary to the history of the act and good business practices, they can escape paying back these debts, although they have the means to do so, and escape so by simply filing under a different chapter.

This is the essence of the bill. Simply making this adjustment, moving many or some of these 182,000 people back into repayment plans, could save $4 billion to creditors. This isn't somebody else's problem. That $4 billion gets paid. If the bankruptcy affects a carpenter, a family owned masonry business, a home building company, it can put them out of business, or the cost gets passed on to someone else who buys the next house. If it is the mom and pop store on main street, it can put them out of business or they absorb the cost. But even if it is a major financial institution, with many credit card companies losing 4 or 5 percent of revenues to bankruptcy, it gets passed on to the next consumer.

This $4 billion is not the problem for some massive company faraway that can afford to absorb it. It is us. We are all paying the bill. The American consumer is absorbing this money from the abuse of the bankruptcy system—often those least able to absorb it, small businesses, family owned businesses, and consumers.

This is why, with these compelling facts and the logic of this reasoning, that the Senate passed a very similar bill by a vote of 83–14 from both parties, across philosophical lines, in an overwhelming vote. That is the bill we bring back today.

It is charged by critics of the bill that this will deny poor people the protection of the Bankruptcy Act. One, this is not true. Two, if in any way it denied poor people the protection of bankruptcy, not only would I not speak for it, not only would I not vote for it, I would be here fighting against it. The simple truth is, no American is denied access to bankruptcy under this bill.

What the legislation does do is assure that those with the ability to repay a portion of their debts do so by establishing a clear and reasonable criteria to determine repayment obligations. However, it also provides judicial discretion to ensure that no one genuinely in need of debt cancellation will be prevented from receiving a fresh start. That bears repeating. No one is denied bankruptcy protection because, ultimately, of judicial discretion. Prove you need the protection, and you can and will get it.

To do this, the bill contains a means test, virtually identical to the one passed by the Senate with 84 votes on a previous occasion. Under current law, virtually anyone who files for complete debt relief under chapter 7 receives it. Regardless of your resources, whether you can repay it or not, your obligation simply gets passed along to the small store owner, the mom and pop store, the family business. You pass on your obligation, regardless of your ability. We changed that by creating a needs-based system which establishes a presumption that chapter 7 filings should either be dismissed or converted to chapter 13 when the debtor has sufficient income to repay at least $10,000 or 25 percent of their debt—a presumption that if you have money in the bank or you have income to repay a portion of this, you should do so. You can answer the presumption. You can overcome it. You can defeat it. But surely it is not unreasonable for someone with those means to have that burden, to prove they cannot pay the debt.

In addition to this flexible means test, the bill before us also includes two key protections for low-income debtors that were a vital part of the Senate bill previously passed. The first is an amendment offered by Senator SCHUMER to protect low-income debtors from coercive motions. This will ensure that creditors cannot strong arm poor debtors into making promises of payments they cannot afford to make. Senator SCHUMER asked for it to be in the bill. It is in the bill. It offers protection from unscrupulous, unfair, and burdensome collections.

The second is an amendment offered by Senator DURBIN. Senator Durbin, who previously held my position and drafted the bill 2 years ago in its initial form, provided a miniscreen to reduce the burden of the means test on debtors between 100 and 150 percent median income. This is a preliminarily less intrusive look at the debts and expenses of middle-income debtors to weed out those with no ability to repay those debts and to move them more quickly to a fresh start.

It was a good addition, but the combination of Mr. SCHUMER's amendment