Senate equally divided 50–50, is going to be a positive force in bringing this Nation back together after this session of Congress comes to a close.

Mr. President, I yield the floor to my colleague from Minnesota, Senator WELLSTONE.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank my colleague from Illinois.

VICTIMS OF GUN VIOLENCE

Mr. WELLSTONE. Mr. President, I submit for the RECORD the names of those Americans who exactly 1 year ago were killed by gunfire.

It has been more than a year since the Columbine tragedy, but still this Republican Congress refuses to act on sensible gun legislation.

Since Columbine, thousands of Americans have been killed by gunfire. Until we act, Democrats in the Senate will read the names of some of those who have lost their lives to gun violence in the past year, and we will continue to do so every day that the Senate is in session.

In the name of those who died, we will continue this fight. Following are the names of some of the people who were killed by gunfire one year ago today:

December 6, 1999: Shyheem Abraham, 17, Philadelphia, PA; Godofredo Carmenate, 70, Miami-Dade County, FL; Mike D'Alessandro, 32, Philadelphia, PA; John Davis, 18, Gary, IN; Norman Dotson, 33, Detroit, MI; Bernie Graham, 29, Fort Worth, TX; Latnaia Jefferies, 27, Gary, IN; James Jones III, 24, Baltimore, MD; Lorraine Lawhorn, 45, Knoxville, TN; Tavares Lavor McNeil, 22, Baltimore, MD; Emmett Outlaw, 76, Memphis, TN; Chester Roscoe, 28, Rochester, NY; Tavrise Tate, 20, Chicago, IL; and Antonio Thompson, 21, Charlotte, NC.

One of the victims of gun violence I mentioned, 45-year-old Lorraine Lawhorn of Knoxville, was shot and killed by one of her coworkers who recently had been fired. The gunman shot Lorraine in the back of the head.

We cannot sit back and allow such senseless gun violence to continue. The deaths of these people are a reminder to all of us that we need to enact sensible gun legislation now.

Mr. President, am I correct that we have 5 minutes left in morning business, and then we will be going to the bankruptcy bill?

The PRESIDING OFFICER. The Senator is correct.

HEALTH CARE

Mr. WELLSTONE. Mr. President, I will speak on the bankruptcy bill in a moment. But in the time I have in morning business, I will speak on another matter. I do not have any statistics with me, but maybe that is better; I can talk about it in more personal or human terms.

In 1997, we passed the Balanced Budget Act with much acclaim. To be very bipartisan about this, President Clinton was very much for it. I think many Democrats and Republicans voted for it. But what has happened is—with the benefit of some time for observation and, hopefully, reflection—the cuts in Medicare have been draconian and have had a very harsh effect on health care, the quality of health care in our States, for Minnesota, Rhode Island, and all across the country.

It does not do any good to look back and affix blame. The point is, last year we said we were going to fix this problem. I think Senators—Democrats and Republicans alike—have heard from people back in their States.

In my State of Minnesota, here is the effect of this. First of all, in our rural communities, in what we call greater Minnesota outside the metro area, in the absence of getting some decent Medicare reimbursement, where you have a disproportionate number of elderly people living who are dependent on health care, the cost of providing that health care runs ahead of the reimbursement. The hospitals are losing money.

Here is the problem. This is not the case of greedy hospitals or greedy doctors. As a matter of fact, they have a very low profit margin. In fact, many hospitals have gone under over the last several years. When the hospital is no longer there, that is the beginning of the death of a community because people do not raise their children in communities unless there are good schools and good hospitals and good health care.

So we are in a real crisis, which should be spelled in capital letters, in the State of Minnesota, where many of our rural health care providers will go under unless we fix this problem, which is a problem we created. The same thing can be said for nursing homes, where there is inadequate reimbursement. The same thing can be said for home health care providers. The same thing can be said for medical education, which is financed, believe it or not, in part out of Medicare. The cuts in the reimbursement have led to a very serious situation in all of our States—certainly in Minnesota.

Then there are those hospitals—Hennepin County Medical Center is a perfect example; it is a very good public hospital; there are not a lot of them left—that, in fact, provide medical care to a disproportionate number of poor people in America. These hospitals are really having a difficult time making it. They are not going to continue to be financially solvent because we have so cut the reimbursement that they do not have the financial stability.

We never should have done this, but we did.

Then last year, we passed a piece of legislation. I feel kind of guilty about this. I didn't think it 100-percent fixed the problem, but I thought it did more than it did. So I went back to meet with people. We all go back to our States. We should. We meet with people in communities. We want to do well for people.

I said: Listen, I think this is going to really help. To the best of my ability, I talked about what this package was. But as it turns out, it, at best, I think, dealt with about 10 percent of the cuts, somewhere in that neighborhood.

We should not leave here—I want to go home, believe me. I want to go home. I would love to be back home. I would love not to be here right now, although I am always happy to be in the Senate. It is an honor. But you know what I am saying.

Mr. President, I ask unanimous consent that I have 2 more minutes.

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

Mr. WELLSTONE. If we just put everything off and have a continuing resolution until next year and we do not fix this problem, it will be irresponsible.

There is one proposal—that tends to be the Republican proposal, as I understand it—that gives a lot more of the money over the next 5 years to managed care plans without any requirement that they be accountable and that they serve senior citizens and serve people who live in rural communities, which they do not do now. Too many managed care plans have cut loose people they are supposed to be helping, and that is not the answer.

We have a package—I believe it is a Democratic package; it can be Democratic, Republican, anybody's package for all I care; I just want to get it done—which is $40 billion over the next 5 years, which does put the emphasis on getting the resources back to our rural health care providers and home health care providers and nursing homes and public hospitals and medical education, all of which is essential to whether or not we are going to be able to provide people with humane, dignified, and quality health care.

This is an important family issue. This is an important people issue. This is an important Minnesota issue. This is an important national security issue. We ought to get the job done before we leave.

Mr. President, it is my understanding that we now have concluded with morning business.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator's time has expired.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BANKRUPTCY REFORM ACT OF 2000—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the conference

report to accompany H.R. 2415, which the clerk will report.

The bill clerk read as follows:

Conference report to accompany the bill (H.R. 2415) an act to enhance security of the United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes.

The PRESIDING OFFICER. Who yields time? The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I have up to an hour. I don't know that I will take all that time. I might take about a half an hour now. If other Senators come down to the floor, then I certainly would yield the floor and reserve the balance of my time for tomorrow.

We are at the final days of the 106th Congress, I hope. Maybe we are not. Maybe we are going to be here until Hanukkah or Christmas. I think we are in the final days.

It is bitterly ironic to me that once again we are dealing with this bankruptcy ''reform'' bill. Chapter 7 bankruptcy is a major safety net program so that if you find yourself in horrible financial circumstances, crisis financial circumstances, you can file chapter 7 and rebuild your life. About 50 percent of the people who do that do it because of a medical bill that puts them under or they lose their job or have such a tight budget.

We don't have that kind of tight budget. We make a very high salary. But a lot of people don't. So if every month you have to scratch and claw to make ends meet, and your car breaks down or, Lord, your child has some kind of an infection and you get antibiotics that can cost $80–$90, you can find yourself in a tough situation. It is major medical bills that are the principal reason.

At the end of the 106th Congress, a do-nothing Congress, are we doing anything during this lame duck session to deal with economic security for families? No. Are we considering any kind of health care legislation that would make health care coverage more affordable for people? No. Are we passing the Elementary and Secondary Education Act, which focuses on that issue about which I heard so much in the Presidential campaign; namely, education, making sure that there is good, high-quality education for every child? No. Have we raised the minimum wage yet? No. Have we done anything to deal with catastrophic medical expenses, if you should be aged, older, and wind up in a nursing home, or you need somebody to help you stay at home so you don't have to be in a nursing home? No.

What do we have before us instead? We have something before us in this lame duck session—the majority leader came out yesterday and called for another cloture vote—that is 100 percent representative of the 106th Congress; that is to say, it will do nothing. It is will do nothing because it is going to come to nothing. And it is going to come to nothing because the President is going to veto it. In all likelihood, we won't be here anyway. It will end up being a pocket veto. If we are here, I am convinced we would get the 34 votes to sustain the veto. But that is now how we are spending our time.

This is a do-nothing effort for, unfortunately, a worse than do-nothing bill because it will do harm to people which will amount to nothing in a do-nothing Congress. There is a symmetry to this.

I observed one thing from the beginning about this bill. It is hemorrhaging support. There was a time when there was a stampede for ''bankruptcy reform,'' but now what has happened is, at least on our side, the majority of Democrats are opposed to this bill. Every single civil rights organization, labor organization, women's organization, children's organization, and consumer organization opposes it. I didn't say the credit card companies oppose it or the big financial institutions.

I think we will get a solid vote on Thursday, and it will pass. But we will be close to the number of votes that we need to sustain a Presidential veto. I thank President Clinton for being so strong on this. In any case, in all likelihood we will be gone. I don't even know what this exercise is about.

We can do better in the 107th Congress. We can have a piece of legislation that is balanced. We can have bankruptcy reform. We can make sure the scope of this legislation deals directly with those people who abuse this system, a very small percentage, and we can also call upon the credit card companies to be accountable. Instead we have this out here, which is going to go nowhere.

I rise to talk a little bit about how awful this piece of legislation is. Supporters have cited the high number of bankruptcy filings in recent years as the reason to move forward on what they call ''reform.'' But there has been a dramatic drop in the last 2 years in the number of bankruptcies. That is about the period of time we have held up this piece of legislation. In the months since the Senate passed bankruptcy reform, any pretense that this legislation is needed has evaporated. The number of bankruptcies has fallen steadily over the past year. Charge-offs and credit card debt are down significantly, and delinquencies have fallen to the lowest level since 1995.

The proponents and opponents agree that nearly all the debtors who resort to bankruptcy do not game the system but do it out of desperate financial circumstances, and that only a tiny minority of chapter 7 filers, as few as 3 percent, could afford repayment.

Where is the crisis? We are trying to address yesterday's headline. But as I have already stated, there really should not be any wonder. The credit card industry wants this legislation. They want to be able to protect the risky investments they have made. They want to be able to pump their credit cards out to our children—everybody has had that experience—and they want the Senate to do their bidding.

Bankruptcy ''reform'' has been nothing more than a filler on the Senate calendar. It is a place holder while we wait for some appropriations bill, some agreement. That is what this proceeding is about.

Guess what. That is where all the attention is focused. The calendar may say that bankruptcy is on the agenda, but I can tell you—and my colleagues know this is true—it is not bankruptcy ''reform'' that is on the minds of our colleagues. Instead, we are all obsessing over negotiations in maybe a smoke-filled room—or maybe it is not smoke filled—with very few of us who are party to it. That is why right now there is little attention given to this legislation. That is another awful thing. We don't get our work done, we don't get these bills out here, and it winds up with a few people negotiating and the rest of us waiting around like potted plants. None of us worked hard to get here for this kind of process. I will tell you something else. None of us worked hard to get here for a process where the majority leader can take a piece of legislation—the State Department embassy bill—and completely gut it, where the only thing left is the number, and put a bankruptcy bill in it and bring it over here under the conference committee rules. That makes a mockery of the legislative process—a mockery.

I will tell you something else. I will try to say it with a twinkle in my eye because it never does any good to get bitter. But even from my own caucuses I sometimes don't understand the votes of some Democrats on this, because we have discussions in our caucus, and the one thing we feel strongly about—and I hope Republicans feel just as strongly about this—is that we have to change our modus operandi. We cannot continue to do things outside the scope of conference and put everything into conference committee. We have to have bills out here, we have to have amendments, and we have to have debate. We have to have a vital institution again where Senators can become good Senators—not wait around for a year and a half where you can hardly do anything. We have had that discussion in our caucus, and then some Democrats come out and vote for this turkey. I don't understand why. It is such an affront to what should be the legislative process and the way this institution works.

I wish to begin by laying out my reasons for opposing this measure, and I hope today we will have a thorough discussion. I know a number of Senators are going to be speaking in opposition. I am sure some colleagues and friends, such as Senator GRASSLEY, will be out here to speak for it, or Senator BIDEN.

Reasons for opposing the conference report: The legislation, No. 1, rests on faulty premises. The bill addresses a crisis that doesn't exist. Increased filings are being used as an excuse to

harshly restrict bankruptcy protection, but the filings have abruptly fallen in the last 2 years. Additionally, the bill is based on the myth that the stigma of bankruptcy has declined. There is not a shred of evidence for that. In fact, that is part of the reason that 116 law professors who teach bankruptcy law in the country have said this bill is a mistake, and they point out that it is hardly the case that people just abuse it and feel no stigma.

No. 2, abusive filers are not the majority; they are a tiny minority. Let's write a good bill that goes after them. But let's not have some sweeping bill that turns the clock back and basically removes a major safety net not just for low-income families but middle-income families. Bill proponents cite the need to curb ''abusive'' filings as the reason to harshly restrict bankruptcy protection. But the American Bankruptcy Institute found that only 3 percent of chapter 7 filers could have paid back more of their debt. Even the bill's supporters acknowledge that the highest percentage you could get would be 10 to 13 percent.

No. 3, the conference report falls heaviest on the most vulnerable. The harsh restrictions in this bill will make bankruptcy less protective, more complicated and expensive to file, and this will make it much harder for low- and moderate-income people to effectively file and get any protection. Unfortunately, the means test and safe harbor will not shield any debtor from the majority of these harsh provisions and have been written in such a way that they will capture many debtors who truly have no ability to pay off significant debt. They won't make it with chapter 13. The only way they will have a chance to rebuild their lives is to be able to file chapter 7. They won't be able to do it under this legislation.

No. 4, the bankruptcy code is a critical safety net for America's middle class. Low- and moderate-income families—especially single parent families—are those who most need the ''fresh start'' which is provided by bankruptcy protection. This bill will make it much harder for them to get out from under the burden of crushing debt.

Colleagues, this is a very harsh piece of legislation that is going to most dramatically hurt the most vulnerable people in this country—women and children, working income, low- and moderate-income families put under.

About 50 percent of the bankruptcy cases are because of a major medical bill. Now, I have no doubt that the credit card industry has pumped unbelievable amounts of money into getting this passed. They are everywhere. This is a pretty one-sided debate because the people who get the protection are the people without the money. They are not the big contributors. They are not the heavy hitters. They are not the well connected. They are not the players. But why don't we get it right and pass a decent bill, not one that hurts those people who are most vulnerable?

No. 5, the banking and credit card industry—is anybody surprised?—gets a free ride. The bill as drafted gives a free ride to banks and credit card companies that deserve much of the blame for the high number of bankruptcy filings because of their loose credit standards. Lenders can pump those credit cards and they can be involved in all the reckless lending—and I will have more to say about that later—and now we bail them out. This is a bailout for the big credit card companies and the big lenders.

No. 6, this legislation may cause increased bankruptcies and defaults. Another bitter irony. Several economists have suggested that restricting access to bankruptcy protection will actually increase the number of filings and defaults because banks will be more willing to lend money to marginal candidates.

Indeed, it is no coincidence that the recent surge in bankruptcy filings began immediately after the last major ''pro-creditor reforms'' were passed by the Congress in 1984. You make it easy for them to do this, to be involved in reckless lending, and they know they will be able to collect. They know people won't be able to file chapter 7, and this will lead to more reckless lending and more bankruptcy.

No. 7, this conference report is worse than the Senate bill.

I opposed the Senate bill. However, even that flawed legislation was far superior to this conference report. The sham bankruptcy ''conference'' report has taken big steps backward when it comes to balancing fairness.

No. 8, again, I am going to emphasize this over and over again to Democrats and Republicans because we are 50–50; or, we may be 50–50. We may be 51–49. But we could be the majority someday. We could very well be the majority someday.

This conference report mocks the legislative process. This is a larger issue than bankruptcy reform. It is a question of the fundamental integrity of the Senate as a legislative body. Not one provision in the original State Department authorization bill—aside from the bill number itself—remains a part of this legislation. To replace in totality a piece of legislation with a wholly new and unrelated bill in conference takes the Congress one step forward to a virtual tricameral legislature—House, Senate, and conference committee.

I will tell you something. Again, if there is one thing we had better agree to over the next couple of weeks when it comes to shared power, it better be that we are going to put an end to the abusive use of these conference committees. We never should have moved away from rule XXVIII. We should not let unrelated amendments or basically whole new bills be put into conference reports and then brought back to this Chamber this way. It is an outrageous abuse of the legislative process. I think the Senate should vote against this for that reason alone.

I say to the majority that we could be a majority in the Senate. You wouldn't want it done to you either.

I want to observe that in July my friend from Iowa, Senator GRASSLEY, referred to the opposition to this bill as ''radical fringe.'' I think he is one of the best Senators in the Senate. But, again, I will repeat this. I am in the company of every consumer organization that I know of—every labor union, every civil rights organization, every women's organization, and almost every children's organization that I know of. It is one of the broadest coalitions I have ever seen.

I say to my colleagues that it is said you can tell a lot about a person by who his or her friends are. You can also tell a lot about a piece of legislation by who the enemies are.

I don't see a lot of working families, a lot of hard-pressed families, a lot of ordinary citizens around this country, from Minnesota to Arkansas to New York to California, clamoring for this piece of legislation for which the credit card companies are so gung-ho.

There is no doubt in my mind that this is a bad bill. It punishes the most vulnerable and rewards the big banks and credit card companies for their own poor practices.

I am for a more balanced bill. I think we can do it the next time. We can go after the tiny minority that abuses it. We ought to have some standards that these credit card companies have to live up to as well.

Earlier, I used the word ''injustice'' to describe this bill. That is exactly right. It would be a bitter irony if the creditors were able to use a crisis—largely their own marking—to encourage Congress to decrease more borrowing access.

We should have a major safety net program for the vast majority in this country.

This is sham reform.

Real bankruptcy reform would address the concentration of financial markets, which is increasing the power and clout of the big banks and credit card companies to unprecedented levels.

Real bankruptcy reform would address the predatory and abusive lending.

Real bankruptcy reform would make working families more economically secure.

Real reform would address skyrocketing and unaffordable medical expenses.

Real economic reform would confront the increasing chasm between the wealthy and the rest of America. But instead of lifting up working families, and instead of lifting up the majority, the standard of living of the majority living in this country, this bill punishes them. And I urge its rejection.

I reserve the remainder of my time for debate tomorrow.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized under the time allocated for Senator LEAHY on the bankruptcy bill.

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

Mr. DURBIN. Thank you, Mr. President.

I come to the floor today, as I did on the last day of October, to state my opposition to this bankruptcy conference report. This is an issue that I have worked on for the last 4 years. For 2 of those years, I served on a subcommittee of the Judiciary Committee with Senator GRASSLEY. I worked very closely with many in drafting what I consider to be very balanced and very positive bankruptcy reform. That bill was called for a vote on the floor of the Senate. Ninety-seven Senators voted in favor of that bill. It was the most overwhelming vote on this subject to my knowledge that we have seen on the Senate floor in modern times. It was a balanced bill. I thought it was a good bill.

For these last 2 years, I have not served on the Judiciary Committee, and it has been Senator GRASSLEY's responsibility to continue this effort. He came forward with a bill which I supported on the Senate floor.

Sadly, when this bill left the Senate floor to go to conference committee, it got in trouble again. Some of the special interests that are interested in this particular bill can't wait for this conference committee to literally rip apart the best efforts of the Senate.

They did it 4 years ago; they have done it this year. They have taken what was a generally good bill on bankruptcy and made some rather disastrous changes in it. I think that is unfortunate.

I accept the premise that bankruptcy reform is overdue. I think it is unfair to consumers across America to try to absorb all the costs of those who go to bankruptcy court, particularly those who have no business in bankruptcy court. But I also believe the credit industry has a responsibility as well. This bill does not serve the needs of balance. This bill, the conference report that is before the Senate today, is a conference report that was written entirely by the Republican Party. They didn't even invite the Democratic conferees into the discussion. It was a slam dunk—take it or leave it.

As far as I am concerned, I want to leave it. I think we can do a better job. If we have to wait for a new Congress to accomplish that, so be it.

Let me say from the outset, I support and am committed to bankruptcy reform. There are some things we can and should do to make it a better system. What we have today is not balanced. Make no mistake, this bankruptcy bill is lopsided in favor of the credit card industry.

When I came to the floor on November 1 and voted against cloture on this particular bill, some of my colleagues asked me why. Why did I, a Member who previously voted for bankruptcy reform, now oppose this conference report? I oppose it because the bill I voted for was decimated in conference. As a result, we have before the Senate a very poor work product.

In 1985, Felix G. Rohatyn, chairman of the Municipal Assistance Corporation of New York City, said:

> [Bankruptcy would be] like stepping into a tepid bath and slashing your wrists. You might not feel yourself dying, but that's what would happen.

I oppose this one-sided bankruptcy conference report on behalf of debtors who lack the lobbying dollars of the credit card industry and are unable to make their voices heard. We must keep in mind, the vast majority of people who go to the bankruptcy court don't want to be there. They are people in a very low-income status who have found themselves, because of circumstances beyond their control, unable to pay off their debts. They go many times with embarrassment to a bankruptcy court because they have nowhere else to turn. I oppose the bankruptcy conference report on behalf of the hundreds of thousands of people in this predicament. I am talking about older Americans, women raising families, and unemployed workers.

When you do a survey of the reasons people end up in bankruptcy court, many of the same reasons keep coming forward: Unanticipated health care bills can happen to anybody; a divorce which results in one of the spouses ending up with custody and very few assets to take care of the children; the loss of a job. These sorts of things are totally unanticipated, and people find themselves needing to turn to bankruptcy to get a fresh start in life.

Older Americans are less likely to end up in bankruptcy than their younger counterparts, but when they do file, a large fraction of them, nearly 40 percent, give medical debts as the reason for filing. Another reason is jobs. The economic consequences for someone who has worked for 30 years and loses his job at age 54 can be catastrophic.

Both men and women are more likely to declare bankruptcy following divorce. Families already laden with consumer debt can't divide their income to support two households and survive economically. Divorced women file for bankruptcy in greater proportion than divorced men. According to the credit industry's own data, women heads of household are not only the largest demographic group in bankruptcy; they are also the poorest. I remind Members of that fact when we consider the debate on this bill.

Yesterday, my friend, the Senator who chairs the Senate Judiciary Committee, ORRIN HATCH, came to the floor and made note of the fact that there are provisions made in this bankruptcy conference report that benefit and improve the status of women and children in the throes of bankruptcy. What Senator HATCH failed to add was that there are also provisions in this bill which enhance and improve the status of credit card companies so that debts that otherwise would have been wiped away or discharged linger and continue to plague the limited assets left over after a bankruptcy.

So while it is true you may put the women and children at the head of the line, the line is a very short one with very few dollars because the credit card industry receives benefits under this bill to allow them to continue to pursue the debts of someone who has filed for bankruptcy, whereas today they could not.

More than half the debtors who file for bankruptcy report a significant period of unemployment preceding their filings. For single-parent households, a period of unemployment can be absolutely devastating. It is on behalf of these debtors that I opposed this unbalanced bankruptcy conference report that gives them little or nothing.

Some of my colleagues may be saying, what is the Senator talking about? Doesn't the bankruptcy bill put women and children first, as Senator HATCH said yesterday? Indeed, that was the rhetoric we heard. Senators came to the floor with large posters claiming how wonderful the bankruptcy bill was for women and children.

Mr. President, the bankruptcy bill does grant first priority to alimony and support claims. Unfortunately, the bill places women and children first in line to receive little or nothing. Priority is only relevant for distributions made to creditors in the bankruptcy case itself. However, such distributions are made in only a negligible percentage of cases.

More than 95 percent of bankruptcy cases make no distribution to creditors because there are no assets to distribute. So to say to women and children, when it is all over we will give you a greater share of the assets, in 95 percent of the cases there are no assets to give them; the assets have been dissipated and used up already by the credit card creditors.

The real battle for women and children is reaching an ex-husband's income after bankruptcy. Right now under current law, child support and alimony share a protected postbankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The credit card industry wants to muscle in and get a large piece of a very small pie. They want credit card debt and other consumer credit to share in this protected postbankruptcy position. They want to shove women and children aside to try to collect on their own behalf.

The simple fact is this: When pitted against the high-powered credit card

industry, women and children do not have the resources to compete. If the credit card industry is permitted to elevate its status to the protected postbankruptcy status position already shared by taxes and student loans, women and children will lose every single time.

Later on, I will make reference to a press release recently put out by the American Academy of Matrimonial Lawyers. They say in their press release: A child is more important than a credit card. Those who vote for this conference report believe just the opposite: The credit card industry has a greater claim to some sort of support from the Senate that the children who are involved in a divorce proceeding.

My colleagues must ask themselves, if this bill truly puts women and children first, why is every major women's group and children's group opposing this legislation? We have advocates for women and children who are opposed to the bill. I will not go through the long list, but if you believe the statements made yesterday by some of my colleagues on the floor, you have to ask yourself, are all of these groups wrong? Are all of these advocates for women and children opposed to the bill for the wrong reason? I don't think so. These are not partisan organizations; they are organizations that fight for women and children when they know that they are struggling to survive. They read this bill as I have, too, and came to the same conclusion. When all is said and done, the credit card industry will do just fine. It is the women, the mothers, the kids who won't.

Mr. President, 116 nonpartisan law professors from all over the country have written expressing their concerns over the grave effects the bill will have on women and children. In addition, to the concerns I have already raised, the law professors write:

> Women and children as creditors will have to compete with powerful creditors to collect their claims after bankruptcy. This increased competition for women and children will come from many quarters: from powerful credit card issuers, whose credit card claims increasingly will be accepted from discharge and remain legal obligations of the debtor after bankruptcy; from large retailers, who will have an easier time obtaining reaffirmations of debt that legally could be discharged; and from creditors claiming they hold security, even when the alleged collateral is virtually worthless. None of the changes made to S. 625 and none being proposed in H.R. 2415 addresses these problems.
>
> The truth remains: if H.R. 2415 is enacted in its current form, women and children will face increased competition in collecting their alimony and support claims after the bankruptcy claim is over. We pointed out this difficulty repeatedly, but no change has been made in the bill to address it.

They go on to say:

> In addition to the concerns raised on behalf of the thousands of women who are struggling now to collect alimony and child support after their ex-husband's bankruptcies, we also express our concerns on behalf of the more than half a million women heads of household who will file for bankruptcy this year alone. As the heads of the economically most vulnerable families, they have a special stake in the pending legislation. Women heads of households are now the largest demographic group in bankruptcy, and according to the credit card industry's own data, they are the poorest. The provisions in this bill, particularly the many provisions that apply without regard to income, will fall hardest on them. Under this bill, a single mother with dependent children who is hopelessly insolvent and whose income is far below the national median income would have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of her ex-husband. A single mother who hoped to work through a chapter 13 payment plan would be forced to repay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children's clothing, even if it meant that successful completion of a repayment plan was impossible.

I can't get over the fact that we have just finished an election season when so many candidates in both political parties spoke of their sympathies and their commitments to America's families. They talked about the vulnerable in our society, about the need for compassion whether you are liberal or conservative, and they spoke to groups about their love for children. Yet we turn around here, 4 weeks and a day after that last election, and start debating a bill which clearly is not designed to help women and children in the most vulnerable circumstances. All of these groups, every single one of them that stand for the interests of these women and children, have told us this is a bad bill.

If you look at this group, you will not see too many political action committees. I don't believe Churchwomen United have a PAC, or many of the others. But certainly the credit card industry does. The financial institutions do. They have come to get involved in this election campaign, as is their constitutional right. Their voice, unfortunately, is a lot louder on the floor of the Senate than the voices of those who represent the women and children across America.

Mr. President, I ask unanimous consent the full text of this letter by the 116 law professors be printed in the CONGRESSIONAL RECORD at this point.

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

DECEMBER 1, 2000.

Re The Bankruptcy Reform Act Conference Report (H.R. 2415).

DEAR SENATORS: We are professors of bankruptcy and commercial law. We have been following the bankruptcy reform process with keen interest. The 116 undersigned professors come from every region of the country and from all major political parties. We are not a partisan, organized group, and we have no agenda. Our exclusive interest is to seek the enactment of a fair and just bankruptcy law, with appropriate regard given to the interests of debtors and creditors alike. Many of us have written before to express our concerns about the bankruptcy legislation, and we write again as yet another version of the bill comes before you. This bill is deeply flawed, and we hope the Senate will not act on it in the closing minutes of this session.

In a letter to you dated September 7, 1999, 82 professors of bankruptcy law from across the country expressed their grave concerns about some of the provisions of S. 625, particularly the effects of the bill on women and children. We wrote again on November 2, 1999, to reiterate our concerns. We write yet again to bring the same message: the problems with the bankruptcy bill have not been resolved, particularly those provisions that adversely affect women and children.

Notwithstanding the unsupported claims of the bill's proponents, H.R. 2415 does not help women and children. Thirty-one organizations devoted exclusively to promoting the best interests of women and children continue to oppose the pending bankruptcy bill. The concerns expressed in our earlier letters showing how S. 625 would hurt women and children have not been resolved. Indeed, they have not even been addressed.

First, one of the biggest problems the bill presents for women and children was stated in the September 7, 1999, letter:

''Women and children as creditors will have to compete with powerful creditors to collect their claims after bankruptcy.''

This increased competition for women and children will come from many quarters: from powerful credit card issuers, whose credit card claims increasingly will be excepted from discharge and remain legal obligations of the debtor after bankruptcy; from large retailers, who will have an easier time obtaining reaffirmations of debt that legally could be discharged; and from creditors claiming they hold security, even when the alleged collateral is virtually worthless. None of the changes made to S. 625 and none being proposed in H.R. 2415 addresses these problems. The truth remains: if H.R. 2415 is enacted in its current form, women and children will face increased competition in collecting their alimony and support claims after the bankruptcy case is over. We have pointed out this difficulty repeatedly, but no change has been made in the bill to address it.

Second, it is a distraction to argue—as do advocates of the bill—that the bill will ''help'' women and children and that it will ''make child support and alimony payments the top priority—no exceptions.'' As the law professors pointed out in the Setpember 7, 1999, letter:

''Giving 'first priority' to domestic support obligations does not address the problem.''

Granting ''first priority'' to alimony and support claims is not the magic solution the consumer credit industry claims because ''priority'' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95% of bankruptcy cases make NO distributions to any creditors because there are no assets to distribute. Granting women and children a first priority for bankruptcy distributions permits them to stand first in line to collect nothing.

Women's hard-fought battle is over reaching the ex-husband's income after bankruptcy. Under current law, child support and alimony share a protected post-bankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The credit industry asks that credit card debt and other consumer credit share that position, thereby elbowing aside the women trying to collect on their own behalf. The credit industry carefully avoids discussing the increased post-bankruptcy competition facing women if H.R. 2415 becomes law. As a matter of public policy, this country should not elevate credit card debt to the preferred position of taxes and child support. Once again,

we have pointed out this problem repeatedly, and nothing has been changed in the pending legislation to address it.

In addition to the concerns raised on behalf of the thousands of women who are struggling now to collect alimony and child support after their ex-husband's bankruptcies, we also express our concerns on behalf of the more than half a million women heads of household who will file for bankruptcy this year alone. As the heads of the economically most vulnerable families, they have a special stake in the pending legislation. Women heads of households are now the largest demographic group in bankruptcy, and according to the credit industry's own data, they are the poorest. The provisions in this bill, particularly the many provisions that apply without regard to income, will fall hardest on them. Under this bill, a single mother with dependent children who is hopelessly insolvent and whose income is far below the national median income would have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of her ex-husband. A single mother who hoped to work through a chapter 13 payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children's clothes, even if it meant that successful completion of a repayment plan was impossible.

Finally, when the Senate passed S. 625, we were hopeful that the final bankruptcy legislation would include a meaningful homestead provision to address flagrant abuse in the bankruptcy system. Instead, the conference report retreats from the concept underlying the Senate-passed homestead amendment.

The homestead provision in the conference report will allow wealthy debtors to hide assets from their creditors.

Current bankruptcy law yields to state law to determine what property shall remain exempt from creditor attachment and levy. Homestead exemptions are highly variable by state, and six states (Florida, Iowa, Kansas, South Dakota, Texas, Oklahoma) have literally unlimited exemptions while twenty-two states have exemptions of $10,000 or less. The variation among states leads to two problems—basic inequality and strategic bankruptcy planning. The only solution is a dollar cap on the homestead exemption. Although variation among states would remain, the most outrageous abuses—those in the multi-million dollar category—would be eliminated.

The homestead provision in the conference report does little to address the problem. The legislation only requires a debtor to wait two years after the purchase of the homestead before filing a bankruptcy case. Well-counseled debtors will have no problem timing their bankruptcies or tying-up the courts in litigation to skirt the intent of this provision. The proposed change will remind debtors to buy their property early, but it will not deny anyone with substantial assets a chance to protect property from their creditors. Furthermore, debtors who are long-time residents of states like Texas and Florida will continue to enjoy a homestead exemption that can shield literally millions of dollars in value.

These facts are unassailable: H.R. 2415 forces women to compete with sophisticated creditors to collect alimony and child support after bankruptcy. H.R. 2415 makes it harder for women to declare bankruptcy when they are in financial trouble. H.R. 2415 fails to close the glaring homestead loophole and permits wealthy debtors to hide assets from their creditors. We implore you to look beyond the distorted "facts" peddled by the credit industry. Please do not pass a bill that will hurt vulnerable Americans including women and children.

Thank you for your consideration.

Signed by 116 Law Professors.

Mr. DURBIN. Mr. President, some of my colleagues have also asked why did I vote for this bill in the first place. When I voted for it, I did so in the hopes that the bill would be strengthened in conference. Instead, exactly the opposite occurred. The bankruptcy code is a delicate balance. When you push one thing, almost invariably something else will give. In this bill, the credit card industry pushed, and what gave were the debtors. Is that fair? Is that balanced? In a word: No.

The constant theme that has guided me throughout the consideration of bankruptcy legislation is balanced reform. I do not believe you can have meaningful bankruptcy reform without addressing both sides of the problem, irresponsible debtors and irresponsible creditors.

The bill that passed the Senate in the 105th Congress was a balanced and bipartisan approach. Senator GRASSLEY and I, along with several other Senators, worked hard to develop it, and 97 Senators supported our efforts and agreed that it was a good, balanced way to deal with the problem.

That bill was killed in conference 2 years ago. Unfortunately, our efforts of many, many months did not result in the bankruptcy reform legislation that we needed.

I had hoped this year would be different. This year when I voted for it, I did so with the hope that some key provisions of the legislation would be strengthened. It didn't happen in conference. Rather, the bill we have before us today falls far short of the Senate effort. Perhaps if the Democrats hadn't been shut out of conference, we would have a more balanced conference bill. Sadly, like so many instances in this Congress, Democrats were kept from the table. Rather than negotiate with Democrats directly and bring forth a bill the President could support, that both creditors and debtors could support, our Republican colleagues are trying to force us to take a bad bill. I say don't take it, leave it. This bill is not balanced.

I said in the beginning of my statement and I will say it again, I support reform. I for one am willing to reach across the aisle and work in a bipartisan fashion in the next Congress to develop a bill. I know some of my colleagues on this side of the aisle are anxious to do the same. In this Congress, we have, rarely but at some times, worked in a bipartisan manner and obtained meaningful results for the American people: the reauthorization of the Older American Act, the H–1B visa legislation, and the Senior Citizens Freedom to Work Act.

Despite these accomplishments, Congress has missed opportunities to pass a lot of other meaningful legislation such as a Patients' Bill of Rights, expanding the current hate crimes law, and passing commonsense gun safety legislation. Let's not add bankruptcy to the list. Let's pledge to work together in the new, 50–50 split in the Senate, in the 107th Congress to come up with a balanced bill.

Although our Republican colleagues may be able to disguise the bankruptcy bill by putting it in a State Department authorization bill, they cannot hide the simple truth—this bill is not a balanced approach. Many of the Members of this Chamber know I am a strong proponent of credit card disclosure. I am not in favor of rationing credit. I believe Americans should be allowed to make that choice. But it should be an informed choice. You should know what you are getting into when you sign up for that credit card. The number of people who end up overextending on credit cards and finding they cannot meet their obligations include quite a few who never understood the terms and conditions of their credit card arrangement.

I am a lawyer. I have been around legislatures and Congress for a long time. When I turn over my monthly statement for my credit card and look at that fine print, I struggle to figure out what they are trying to say to me. There are some basic things people ought to know when they sign up for a credit card. What is the interest rate? How much am I going to pay and for how long? Is the interest rate going to change? If I receive a monthly statement and this is the minimum monthly payment, how many months do I have to pay off that minimum payment before it is finally gone? During that period of time, how much will I pay in principal, how much will I pay in interest?

These are not outrageous ideas. It is kind of the basic information you would expect to know so consumers can know whether or not they have overestimated, whether they are going too far in debt. You would think most people in the credit card industry would not fight that. The fact is, they did. They don't want to make that disclosure to the American people. They are afraid if the American consumers have the facts, the American consumers will make some different choices. They might not sign up for that extra credit card. They might think twice before just sending in a couple of bucks a month if it means they are going to be paying for years and pay more in interest than they are on the principal.

During the course of my involvement in the industry, I have tried to stress to the credit industry that they have some responsibility in this debate as well. There is ample evidence to suggest they are hawking credit to children, to college students, and people already deeply in financial trouble.

In 1999 alone, there were 3.5 billion credit card solicitations mailed to American households. If you follow

this debate, you know exactly what I am talking about. You go home every night, open the mailbox, take a look at what is there, and throw away all the new credit card applications because each of us, particularly in the households that are considered creditworthy, received an armload of these invitations to sign up for a new credit card on a regular basis.

Credit cards have been addressed to 4-year-old preschool children and, yes, every once in a while the family dog gets an application, too. These 3.5 billion credit card solicitations don't take into account phone calls at dinnertime, the ads stuck in the middle of magazines, or the booths set up on every college campus offering free tee-shirts if you just sign up for a credit card. In fact, on many college campuses, each time a student buys something at a bookstore they often get a credit card solicitation at the bottom of their bag. The bags are premade with credit card applications and ads at the bottom of the bag. These ads are directly aimed at college students, ads such as those for Visa, which say: ''Accepted at more colleges than you were.''

Never mind that these students, many of them young men and women away from home for the first time, don't have the skills to navigate what could be some choppy waters. Some of these students end up ruining their credit before they even get their first real job. Are we supposed to believe the credit card industry is not responsible? Regrettably, the already minimalist approach to credit card disclosure in the Senate bill was weakened further in the conference.

I continue to believe, as I did in 1998 when we passed strong disclosure provisions, that consumers benefit from knowing, for example, that paying the 2 percent monthly minimum on a $1,295 balance would take 93 months, or more than 7 years to pay off the balance. An estimate of the total cost to pay off this $1,295 balance if only the minimum payments are made is $2,418—almost twice the original balance. If all this information were available, I don't think many consumers would consider the monthly minimum payment a very good idea.

Oh, certainly there could be a month when that is all you can pay. But you have to know down the line, if you go along with the credit card industry and just make the minimum monthly payment, at the end of this you are going to pay a lot more in interest. Maybe that is your choice. But shouldn't you know, going in? Shouldn't that information be given to you?

College students might think twice before using their credit cards to charge another pizza. The bankruptcy bill in the 105th Congress included debtor-specific information that enabled cardholders to examine their current credit card in tangible terms, driving home the seriousness of their financial commitments.

Sounds simple, doesn't it? Today's technology is such that it probably would not take much to make this happen. So why isn't this reasonable provision part of the bankruptcy bill? The credit card industry said: No, we don't want to make any additional disclosures, we don't want to give consumers more information, we don't want to give them a reason to say no. We want to create reasons for them to say yes.

Frankly, if you take a person who is in a precarious credit situation and they sign up for a new credit card and end up in bankruptcy court, doesn't the credit card industry bear some responsibility? It was the consumer's choice to take the credit card, but how diligent was the credit card industry in finding out whether a person really knew the terms and conditions of the agreement and whether or not they were creditworthy?

Unfortunately, this industry, not the majority of the American people, have the money and resources to make their wishes known, and thus the bill we have on the floor. The credit card industry decided it was in their best interest not to let the American people know exactly what paying only the minimum balance on their 19-percent credit card would actually cost them.

This year, the debtor-specific information was reduced to providing cardholders with generic examples, and I accepted this reduced operation with some reservations. It is my understanding that it was even further weakened in the conference committee.

It amazes me. The credit card industry, with all of their computers and all of their information, when you say to them: When you put down the minimum monthly payment on a card, can you put right next to it how many months it will take to pay it off? They say: That is just totally beyond us; we don't know that our computers could ever figure that out.

I do not get it. I do not understand how they can say that with a straight face. They know that information is readily accessible. They know also it may discourage people from putting too much debt on their credit cards. That will cost them business, it will cost them interest payments, and they will not let it be included in this bill.

The Republican leadership agreement permits banks with less than $250 million in assets—incidentally, that is over 80 percent of all banks—to have the Federal Reserve provide its customers with a toll-free number to review their credit card balances for the next 2 years. It is unclear whether the banks would be required to provide the service themselves after 2 years. The exemption would cover 4,000 banks holding about $3 billion in consumer credit card debt.

The American people are not going to be calling this toll-free number to find out what their credit card balances are. You know it, I know it, the credit card industry certainly knows it, too. That is why they agreed to it. They agreed to a provision that does little to help debtors take responsibility for their financial situation.

This is a departure from a balanced approach. This is a sham. This is about as worthless as the warnings on cigarette packages. They do not want to give consumers specific information about their credit card balances. The credit card industry won that battle in the conference report.

In addition, the current bankruptcy bill provides for a homestead exemption that is weaker than the version included in the Senate-passed bill. The Senate, in a 76–22 bipartisan vote, agreed to an amendment by Senator KOHL of Wisconsin to create a $100,000 nationwide cap on any homestead exception.

You go before a bankruptcy court and say: Here are my assets. In many cases, it is the home. Many States decided what the value of that home to be exempted by creditors can be. Every State has a different standard. Some States have no standard. We have had outrageous situations in the past where well-known actors and public figures, knowing they were going to file for bankruptcy, bought an expensive estate or ranch and put every asset they had in it, walked into the bankruptcy court and said: I have nothing but my home. The home happens to be palatial, and the home is exempt.

If we are talking about holding people accountable for their conduct, why would we let this kind of thing happen? If the average mother, fresh from a divorce and trying to raise kids, has to scrape together the pennies and dollars she has in savings and declare them as assets and put them on the table to be taken by creditors, why shouldn't the wealthiest among us be held to the same standards and not able to exempt estates and ranches and mansions? It seems to make sense, doesn't it? It certainly does not for those who are arguing for passage of this bill.

This amendment we proposed would have closed a major loophole in the bankruptcy law: a homestead exemption where a person gets to hide from a bankruptcy court the value of their home. It is different in every State. In Illinois, it is $7,500. You cannot buy much of a home in my State for that amount. In other States, it is a lot more. Florida and Texas have no caps whatsoever. In a State such as Texas, wealthy debtors are able to file for bankruptcy and keep their mansions. Is it fair? Absolutely not. If we are looking for real reform in bankruptcy, why haven't we addressed this? Keeping a home worth several hundreds of thousands of dollars, if not millions, out of bankruptcy is a ruse; it is a fraud.

I voted in support of Senator KOHL's amendment to close this loophole. He placed a hard cap on unlimited State homestead exemptions.

Unfortunately, the conference report guts this reform to permit debtors to avoid any Federal homestead cap. Thus, in States such as Florida and Texas, a homeowner who has equity in

her home that existed prior to the 2-year cut-off can keep all the equity, even if the home is valued in the millions of dollars. This provision only benefits the wealthiest people in America, and this loophole is unacceptable.

When we consider that the average income of people who file for bankruptcy in America is under $30,000 a year, why in the world would we pass a bill which allows folks who are millionaires to literally protect their assets and not provide protection for the women and children who are most vulnerable going into bankruptcy court because of a lost job, a divorce, or medical bills?

That just tells us what this bill is about. It tells us why so many people are so anxious to see it pass. They want to protect the wealthiest in our society, and they do not care much about those who are on the other end.

Also, the bill we have before us today fails to include an amendment by my colleague, Senator SCHUMER, known as the clinic violence amendment. This Chamber is well aware that the Schumer amendment prevented documented abuse of the bankruptcy system by those who violated the FACE Act or an equivalent State law. The Senate overwhelmingly passed the Schumer amendment 80–17. There is no reason not to include it in this bill.

By failing to include the Schumer amendment, the bill allows many perpetrators of health clinic violence to seek shelter in the Nation's bankruptcy courts.

By failing to include the Schumer clinic violence amendment, this bill says if someone injures or even kills someone outside an abortion clinic or other health care clinic, they can hide under the bankruptcy code and have their debts discharged under chapter 13 bankruptcy. Student loans are not even dischargeable under chapter 13.

Why would we allow perpetrators of this violence to usurp our clinic protection laws by feigning bankruptcy? The amendment says, no, we will not.

This Senate voted in favor of it. No matter what your position on the issue of abortion, I am sure my colleagues will again agree, as they did on a vote of 80–17, that perpetrators of clinic violence should not be permitted to circumvent our clinic protection laws. Failing to include the Schumer amendment that has strong bipartisan support does not make sense. It is not balanced.

So there is no mistake and the record is clear, I support and I am committed to bankruptcy reform. I have heard from many groups and my constituencies in Illinois urging opposition to this bill.

Labor organizations, representing a lot of working men and women across this country, middle-income workers from virtually every type of trade and background, have come out in opposition to the bill. NARAL, the National Partnership for Women and Children, the leadership Conference on Civil Rights, the Religious Action Center, the Consumers Union, the Bankruptcy Center in Illinois, and the 116 nonpartisan law professors I mentioned earlier have all urged Members of the Senate to vote against it. They are right. We should leave it and work together in the 107th Congress for a much more balanced approach.

Yesterday, I received a letter from the American Academy of Matrimonial Lawyers urging Congress to oppose the bill. Its press release out of Chicago as of yesterday says:

The Nation's top divorce and matrimonial attorneys called today for Congress not to approve a little-debated, but heavily lobbied bankruptcy provision currently pending final approval in the lame duck session of Congress, that would take monies away from child support payments for credit card debts when individuals declare bankruptcy.

"Children should come before credit card companies," said Charles C. Shainberg of Philadelphia, the Academy's new president.

The provision, part of H.R. 2415, and which has quietly passed both the House and Senate, affects Federal bankruptcy filings. Under Chapter 13 filings, a common form of individual bankruptcy, the individual works out a court-approved payment program to pay down debt. However, currently child support and alimony have priority status, meaning that all child support and alimony need to be paid before credit card companies can collect their debts.

Under this new bill—

Which we are currently debating—

the deferral or relief from credit card payments, technically known as their dischargeability, would be limited, so that children and credit card payments would have the same priority and payments would be split between [a child and a MasterCard.]

There currently are some 1.4 million bankruptcy filings in the United States each year, and more are expected if an anticipated cooling of the economy occurs.

The bill is backed primarily by Republicans and some Democrats [as the vote showed yesterday]. President Clinton has said he will veto the bill, but it is unclear from the election results what will happen under a new administration.

Continuing to quote:

"The way for the credit card companies to improve their receivables is to limit the millions of cards they offer to poor credit risks, not take money from women and children," said Linda Lea Viken of Rapid City, S.D., who chairs the Academy's Federalization of Family Law Committee.

Another problem presented by the bill, Academy attorneys say, is that past due child support payments and alimony are not dischargeable, so the person who has to make credit card payments in addition to alimony and child support will keep falling farther and farther behind in his or her total payments, eventually resulting in a Chapter 7 bankruptcy filing, or total insolvency.

The American Academy of Matrimonial Lawyers is comprised of the nation's top 1,500 matrimonial attorneys who are recognized experts in the specialized field of matrimonial law, including divorce, prenuptial agreements, legal separation, annulment, custody, property valuation and division, support and the rights of unmarried cohabitors.

The purpose of the Academy is to encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law.

Yesterday, this letter arrived and made it clear to me that this bill has problems that will be felt not by credit card companies but by a lot of people in very tragic circumstances for a long time to come.

Before I yield the floor, I want to mention something curious that has happened.

The Administrative Office of the United States Courts recently released its statistics regarding bankruptcy filings for the fiscal year 2000 that ended September 30 of this year. They report that bankruptcy filings continue to decline. Personal bankruptcy filings were down 6.8 percent from the 1,354,376 bankruptcy filings for fiscal year 1999. For businesses, filings were down 6.6 percent.

This is great news for the American people—creditors and debtors alike. As the University of Maryland's Department of Economics notes in their recent study:

Not only have personal bankruptcies stopped their explosive growth, but the trend has reversed, and the U.S. per capita bankruptcy rate is actually lower than it was at the time that the bankruptcy bill was introduced.

I said it before, and I will say it again: I support balanced bankruptcy reform. But the momentum and impetus behind this reform was the complaints of the credit industry that so many people were filing for bankruptcy. It was a curiosity, when they came with this complaint, we were in the midst of the largest economic expansion in the history of this country. You would wonder, if we are doing better as a nation, why are more people filing for bankruptcy?

I am not sure it is the right answer, but it is the one that may be right. People tend to believe, in good times, there will never be bad times. They overextend themselves. They see their neighbors doing well and buying things, and they may want to join them, when they should think twice, and then they find themselves in bankruptcy court.

When the national mood starts to change, people worry a little about the economy. They take care in terms of their credit responsibilities and their credit obligations. That may account for this decline in the filing of bankruptcies. It certainly should give pause to those who think this is an emergency measure which should be considered by a lame duck Congress.

I believe any serious reform must be balanced and take into consideration the people behind all the statistics.

Unfortunately, the bankruptcy bill before us today—the one masquerading as a so-called State Department authorization conference report—falls short of the Senate effort. The bankruptcy bill before us today, like its predecessor in the 105th Congress, has been decimated in a partisan conference. This bill should meet the same fate as that earlier bill.

I will oppose this report and urge my colleagues to do the same.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. TORRICELLI. Mr. President, for 4 years, my colleague, Senator GRASSLEY, has shown extraordinary leadership in addressing the failings of the current bankruptcy system. He has enormous patience and has exhibited extraordinary leadership. I have been very proud to be his partner in this effort which now comes to a critical phase. This has not always been a popular fight. But it is certain to be a very important one.

I think everyone agrees that our bankruptcy system is in need of repair. It is only over the question of how to fix the bankruptcy system that there is any issue at all.

In the last Congress, efforts to pass bankruptcy reform legislation came extremely close. It failed simply in the waning days of the session. Having come so close in the 105th Congress, I inherited the role of the ranking member on the subcommittee with jurisdiction over the legislation. I felt some considerable optimism that this time we would be successful.

The bill passed the floor by very wide margins. The issues had narrowed. There was an overwhelming sense that there was a need to reform bankruptcy. I think that my optimism was well placed.

Since that time, I have spent countless hours working with Senator GRASSLEY and many other Members of the Senate on both sides of the aisle dealing with very difficult issues in crafting this bill. I am very grateful to Senator GRASSLEY. I am very grateful to the Members on both sides of the aisle for having brought us to this point with this bipartisan bill that commands the support of over two-thirds of the Members of the Senate on both sides of the aisle.

I do not contend that it is a perfect bill. No bill that commands such broad support and that is this controversial could be perfect. Indeed, if I were drafting the bill on my own, or if any Member of the Senate were drafting this bill on their own, it would be different in some ways and in some fundamental respects.

But is it a fair and balanced bill? Yes. Does it deserve the support of the Senate? Absolutely. Will it improve the functioning of the bankruptcy system without injuring vulnerable Americans who need bankruptcy protection? Yes, it will. If it didn't, it wouldn't have my name on it.

For these reasons, I believe the bill deserves—as indeed clearly it will have—broad bipartisan support.

There is obviously speculation that although the bill will pass the Senate by a wide margin—it passed the House of Representatives by very wide margins—it might be vetoed when it reaches the White House.

I want to take a moment to outline for you, Mr. President, the reasons I believe a veto on this legislation would be a very serious mistake.

First, as I mentioned before, the bill is a product of extensive bipartisan negotiations—negotiations in which the White House has been a vocal and integral part. Many of the improvements that we have seen in the bill have been concessions to the White House demand that it be more consumer friendly. The President appropriately asked that consumer protection from credit card abuse—particularly for the young, the uninformed, and for the elderly—be in this bill. It is in this bill, and the President can take great pride in it.

We should not forget that there is also a very real possibility that the next administration may not have as strong a commitment to consumer issues as this administration, thus rendering the bankruptcy bill to emerge in the next Congress potentially significantly worse.

This is critical for the Clinton administration to understand. No one knows how this Presidential election is going to be resolved, and we may not know before this Congress leaves. There is a real chance that the next President of the United States is not going to share Bill Clinton's commitment to consumer protection or other objectives in the bill, meaning that from the administration's perspective this bill may be the best that we can get. And to veto it is to lose a real chance for meaningful consumer protection in bankruptcy law.

On substance, this bill provides a very important fix in our flawed bankruptcy system. Indeed, it may be tougher than current law. As I think the administration will concede, it also includes fair changes.

At a time when people in the United States are enjoying the most prosperous economic period in our history, there has been a rapid rise in consumer bankruptcy. In 1998 alone, 1.4 million Americans sought bankruptcy protection. That is a 20-percent increase from 1996 and a staggering 350 percent increase since 1980.

While filings dipped by 100,000 in 1999 to just 1.3 million, they are still far too high. It is estimated that 70 percent of those filings were done under chapter 7, which provides relief from most unsecured debt. Conversely, just 30 percent of petitions filed under chapter 13 require a repayment plan.

A study released last year by the Department of Justice indicated as many as 13 percent of debtor filings under chapter 7. A staggering 182,000 people each year could afford to repay a significant amount of their debts. They could, but they won't because they are indeed using those chapters of the bankruptcy code to allow them to escape debt that they are capable of paying.

If, indeed, this were not the case, and if the bankruptcy reform that we are offering the Senate were in place, an extraordinary $44 billion would be returned to creditors—banks, to be sure; credit card companies, obviously; but also small businesses, small contractors, family companies, mom-and-pop stores, companies that cannot afford to have the bankruptcy system of our country misused. The larger banks and the credit card companies will always cover this abuse. They have the financial resources. They can absorb the loss. It is not for them that I stand here today supporting this bill. It is for the thousands of small businesses that cannot afford to absorb $4 billion of inappropriate bankruptcy. This bill before the Senate ensures that those debtors with the ability to repay these debts will do exactly that.

Despite what we hear from opponents of the bill, the core of the bill now before the Senate is a bipartisan agreement reached in May after months of informal negotiations. It is very similar to a bill that passed this body by a vote of 83–14, but in my judgment is a better bill than that legislation that commanded 83 votes in this Senate. Critics of bankruptcy reform have charged that the bill denies poor people the protection of the bankruptcy system. This is simply untrue. No American is denied access to bankruptcy under this bill—nobody.

What this legislation does is assure that those with the ability to repay a portion of their debts do so by establishing clear and reasonable criteria to determine repayment obligations. But it also provides judicial discretion to ensure that no one genuinely in need of debt cancellation will be prevented from receiving a fresh start. Bankruptcy protection allowing all Americans a clean slate, a second chance at their economic lives, should not lose that chance and, under this bill, will not lose that chance. Judicial discretion remains where a good case can be made.

To ensure that this will remain the case, the bill before the Senate contains a means test virtually identical to that passed in the Senate bill. Under current law, virtually anyone who files for complete debt relief under chapter 7 receives it. This bill simply changes that criterion to a needs-based system which establishes a presumption that chapter 7 filings should be either dismissed or converted to chapter 13 when the debtor has sufficient income to repay at least $10,000 or 25 percent of their outstanding debt.

Isn't that fair? If some small business has provided a product or a service, you are the recipient of it, and you have demonstrated ability to pay $10,000 of your obligation or demonstrated the ability to pay that percentage of your obligation, shouldn't you have to pay it? That is the test that is being applied. I think it is fair.

Even so, the presumption may be rebutted if the debtor demonstrates special circumstances requiring expenses

above and beyond those the court has considered in applying the means test. We give an escape clause: Yes, you have the ability to pay this, but you have special circumstances. We will still exempt you. This is a flexible, yet efficient screen to move debtors with the ability to repay a portion of their debt into a repayment plan, while at the same time ensuring judicial discretion for a review of the debtor's circumstances.

In addition to this flexible means test, the bill before the Senate also includes two key protections for low-income debtors that were part of the Senate-passed bill. 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 debtors into promising to make payments they simply cannot afford to make. Poor debtors will not be forced to reaffirm these debts if they cannot afford to make them. That was asked to be put in the bill to protect low-income people, and it is in the bill.

The second is an amendment offered by Senator DURBIN, a mini screen, to reduce the burden of the means test on debtors between 100 and 150 percent of the median income. This is a preliminary, less intrusive look at the debts and expenses of the middle-income debtors, to weed out those with no ability to repay those debts and move them more quickly to a fresh start.

So it is a special category and a mini screen, if you are in that 100 to 150 percent of the poverty level, to ensure that you are given this extra degree of protection.

In addition to a flexible means test, in addition to the Schumer safe harbor and the Durbin mini screen, the bill contains other provisions not a part of the original Senate bill to protect low-income debtors:

One, a safe harbor to ensure that all debtors earning less than the State median income will have access to chapter 7 without qualification. Less than median income, no question, no qualifications, you are in chapter 7. We are not interested in denying protections to particularly low-income people.

Two, a floor to the means test to guarantee the debtors unable to repay less than $6,000 of their outstanding debt will not be moved into chapter 13. If that is the limit of your resources, that is all you can pay back, we are not interested in you; you get full protection.

Three, additional flexibility in the means test to take into account a debtor's administration expenses and allow additional moneys for food and clothing expenses. So even if you have the money, even if on the bill's face you can pay back that portion of your debt, if indeed that money is needed for basic human items—food, clothing—we are removing you from provisions of the bill. You will not be paying back those bills. You will be subject to full, complete protection.

This should convince my colleagues that it will not make it more difficult for those in dire need to sweep away their debts and obtain a fresh start. It will not be more difficult; it will be easier. The bill has been drafted very carefully to protect people in exactly these circumstances. Absolutely no one—no one—will be denied, therefore, access to bankruptcy and the discharge of their obligations. But every one of these additional five provisions makes that even less likely for people with low income.

All the bill does, therefore, is establish a process to move debtors who can afford to repay a substantial portion of their debt from chapter 7, where they can now sweep away all those debts, into chapter 13, where they have a repayment plan. That is the bill. Demonstrated ability to pay; a repayment plan for your debts.

Critics, however, have also argued that the bill places an unfair burden on women and single-parent families. This is the most important emphasis that must be made about this bill. That is not true. I wouldn't vote for this bill, I wouldn't cosponsor this bill, I wouldn't have worked for this bill for 2 years, I wouldn't stand here today if there was anything to the argument that women, single-parent families, children, have any vulnerability because of this legislation. Nothing would be more important to me than protecting these vulnerable citizens.

Indeed, the bill contains the following: An amendment that I offered with Senator HATCH to facilitate the collection of child support by requiring the bankruptcy trustee to give the person to whom support is owed information on the debtor's whereabouts. Fine for bankruptcy; there is a chance this can impact, obviously, a single mother or a child. We are now affording the ability to locate the person who has the obligation in order to help the single mother or the child.

Most important, the bill protects single-parent families by elevating child support from its current seventh position in line seeking the resources of the person in bankruptcy to first. The single mother, the child, who right now is behind financial institutions, behind the Government, will now be behind no one; they are the first claim on assets.

Finally, the bill requires that a chapter 13 plan provide for full payment of all child support payments that became due after the petition was filed. Meeting family obligations must be in the repayment plan, which is not required under current law. These provisions put both families and the States in a better position than under current law.

But it doesn't stop there. The bill also includes a number of other provisions designed to ensure protections for other vulnerable people in American society. It protects the rights of nursing home patients when a nursing home goes bankrupt. The bill requires that an omsbudsman be appointed to act as an advocate for the patient and provide clear and specific rules for disposing of patient records, a protection not now available for people in nursing homes.

The bill includes a permanent extension of chapter 12 programs to provide expedited bankruptcy relief for farmers, a provision not now in the bankruptcy law.

Finally, and most importantly, I have always said it is critical the bill not only address debtor abuse of the bankruptcy system, but also overreaching by the credit card industry. From the beginning, we insisted that consumer protection from abuse in credit card solicitation and sales must be in any balanced bill. The credit card industry now has more than 3.5 billion solicitations a year. That is more than 41 mailings for every American household, 14 for every man, woman, and child in the Nation.

We recognize it is out of control and in some cases irresponsible. The bill addresses the problem. Vetoing the bill accomplishes nothing. Voting against the bill means voting against consumer protections that otherwise will never be in the law. This is the chance to do something about credit card abuse. Opposing the bill and vetoing the bill means we do nothing about credit card abuse.

The problem is substantial because it is not the sheer volume of solicitations, it is also who is targeted. High school and college student solicitations are at record levels. Since the decade began, Americans with incomes below the poverty line have doubled their uses of credit. The result is not surprising. Mr. President, 27 percent of families earning less than $10,000 a year have consumer debt that is more than 40 percent of their income.

I in no way advocate that less credit should be made available to low-income and moderate-income consumers, but rather that consumers be given more complete information so they can better understand and manage their debts. That is what this bill does. The bill contains provisions, which I authored with the help of Senators SCHUMER, REED, and DURBIN, to ensure consumers have the information necessary to help them better understand and manage their debts. The bill now requires lenders to prominently disclose: First, the effects of making only the minimum payment on your account each month. That is not in the current law. It will be in the law if this bill becomes law. Next, that interest on loans secured by dwellings is tax deductible only to the value of the property. That is not in current law. It will be if this bill is signed. Also, when late fees will be imposed, and the date on which introductory or teaser rates will expire and what the permanent rate will be after that time.

In addition, the bill prohibits the cancelling of an account because the consumer pays the balance in full each month and thus avoids incurring a finance charge.

Indeed, there is one other issue we will also hear discussed on the floor—the question of debtors who seek to discharge the judgments they owe because of their violence against abortion clinics. This is the final issue. And for many Members of the Senate it may be the central issue in deciding whether or not to vote for this bill. It may be determinative of whether or not the President signs this bill.

Let me personally, therefore, begin a discussion of it by making clear that I support Senator SCHUMER in his efforts to have his amendment included in the bill. I voted for it. Given the opportunity, I will vote for it again. I believe it is a provision that is both necessary and appropriate.

But I also recognize the reality of the situation. The Republican leadership is not going to include Senator SCHUMER's amendment in this bill. It is not going to happen. That leaves the Senate with a very real choice. The family businesses, the financial institutions, the family contracting companies that face bankruptcy every day because they cannot collect debts owed to them will be jeopardized. The consumer protection that was put in this bill for people who have problems with the credit card industry, who cannot manage their debts, who need more information, will be lost without this bill. Bankruptcy reform will simply not occur for yet another Congress. Indeed, if George W. Bush becomes President of the United States, our best chance at balanced, bipartisan bankruptcy legislation will be lost for 4 years. That is a high price to pay for Mr. SCHUMER's amendment on abortion clinics.

Since the bill only maintains the status quo, it may not improve the situation on abortion clinics but it does not worsen it either. We live to fight another day on that narrow issue, but we make all this progress on so many other issues. Enactment of this legislation will impact many people involved in so many parts of our economy. I urge my colleagues to think carefully about this bill. Overwhelmingly, you have voted for it before. It is now better than it was when you voted for it previously, and 84 Senators voted for it previously. I urge the President to think very carefully about vetoing this legislation for the most narrow of provisions.

The FACE legislation that was offered and adopted previously by this Congress did much to protect abortion rights. If it needs to be strengthened again, we can do so again. But to lose bankruptcy reform protections that I believe are contained in this bill for women and children, for small businesses, to lose the restraints on the credit industry and credit card solicitations—that is a high price to pay; to lose 4 years of work for this balanced bipartisan approach.

I urge adoption of the bill. I am proud to be its coauthor with Senator GRASSLEY, proud of the work we have done together. I urge its adoption and I urge its signature.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I seek recognition to speak on the pending business, which is the bankruptcy bill. I had an opportunity to hear about one-fourth of the presentation of my good friend, the Senator from New Jersey, Mr. TORRICELLI. I heard him compliment my efforts as author of this legislation. In fact, this bill has been so successful in the Senate only because Senator TORRICELLI, as ranking Democrat on the Courts Subcommittee, has been so cooperative, recognizing there is a problem that should be addressed and working in a bipartisan way to make sure such a bill was put together and introduced by me and him, and then working through a long hearing process in the subcommittee and the full committee to develop a bill that would be reported out of the Judiciary Committee, a committee that tends to be very evenly divided on a lot of issues, by a very wide margin. Our bill came out with a fair sized majority. Then it passed overwhelmingly in the Senate with only 14 dissenting votes.

We had a very difficult time conferencing this bill, but there was finally an effort to go to conference. Senator TORRICELLI was very helpful in working out the details of the conference.

This afternoon, I saw, and the people of this country saw, through his remarks that continued cooperation, and that continued cooperation evidently goes way beyond what is going on in this Chamber on bankruptcy reform. It continues, through his own admission, through his recommendation to the President, when the President gets this bill, that the President should sign this bill. There will be people from the other side requesting the President not sign this bill.

I hope the President knows this bill has broad bipartisan support. We not only saw it in that vote of only 14 dissenting votes when it passed the Senate several months ago, but we also saw it yesterday in the vote on cloture where there were 67 Senators, 7 more than needed, to stop debate on this bill.

That brings me to the issue of how this bill has finally been conferenced and brought to the floor and has passed through the House of Representatives already, to be presented to the President hopefully after a successful vote tomorrow afternoon at 4 o'clock under the unanimous consent agreement.

We had an opportunity yesterday and today to hear the Senator from Minnesota, Mr. WELLSTONE, and we also heard others complain about the parliamentary process of getting this bankruptcy bill to the floor. It is an unbelievable thing for him and other Senators to condemn the way this bill finally got to conference. The Senate passed the bankruptcy bill after weeks of debate and after disposing of hundreds of amendments. On the issue of disposing of hundreds of amendments, I compliment Senator HARRY REID for his work in helping us work through those amendments.

The Senator from Minnesota still continues to object to the way in which this conference was handled saying it was not handled in the regular order of doing business in the Senate. The fact is, not only Senator TORRICELLI and the Senator from Iowa worked to get this bill to conference, but we also had many meetings between Senator DASCHLE, the Democratic leader, and Senator LOTT, the Republican leader, on how to get the bill before the Senate.

In every respect, on the motions it would take to accomplish that under the regular order, the Senator from Minnesota was in a position to object saying he was going to object and, consequently, then conferees could never be appointed in the way they are for most bills.

So it is misleading, it seems to me, for the Senator from Minnesota to pretend that he is not the reason this bill has not moved in the conventional way that bills ought to move, and then to blame others for finding a way of bringing a conference report.

It seems to me that if we did not find another way, it would be irresponsible on our part not doing our duty to the 83 Senators who voted for this bill the first time it passed the Senate. So we found a way to conference this bill with an unrelated piece of legislation.

By the way, very rarely are conference committees three Republicans and three Democrats, but this committee was made up that way. So for this bill to move to the floor of the Senate, there had to be members of Senator WELLSTONE's political party, the Democrat Party, who agreed that this is such an important piece of legislation, with 83 or 84 Senators voting for it in the first place, that it had to happen and it had to come to the floor. So we got this bill out of conference with the help of Senators on the other side of the aisle. I thank them for their cooperation.

Also earlier in this debate, Senator WELLSTONE referred to the fact that there seems to be no evidence at all that you can decrease the number of bankruptcies filed by the usual stigma against bankrupts that has been traditional throughout American society. I have to admit in recent years that has not been true. That is one of the very basic reasons we have had a dramatic increase in the number of bankruptcies since the last bankruptcy reform legislation that was passed in the late 1970s.

In the early 1980s, we had about 300,000 bankruptcies filed. It did not go up very dramatically until about the early 1990s, when it shot up very dramatically from maybe reaching 700,000

to almost doubling that amount, and continuing to rise until it got to a high of 1.4 million bankruptcies.

There is some evidence that it has come down just a little bit, but I am also going to be speaking shortly about evidence showing that the number of bankruptcies is going to shoot up again this year by 15 percent. But I think there is not the stigma in our society against people going into bankruptcy that there used to be. And that is one reason. But Senator WELLSTONE has spoken to the point that there is no evidence at all that the decrease in stigma associated with bankruptcy is related to this increase in bankruptcy filings. This is simply not true.

I have before me a study from 1998, from the University of Michigan, entitled ''The Bankruptcy Decision: Does Stigma Matter?'' by Scott Fay, Erik Hurst, and Michelle J. White, economists at the University of Michigan. They concluded—and I will read just one sentence from the abstract—

We show that the probability of debtors filing for bankruptcy rises when the level of bankruptcy stigma falls.

I am not going to spend the taxpayers' money to put this entire document in the RECORD, but the address is the Department of Economics, University of Michigan, Ann Arbor, MI, 48109, if people want to refer to this and read from it. I advise them to do it because they will see, in a very statistical way, in a very in-depth way, that when there is stigma associated with bankruptcy—the societal disapproval of people filing for bankruptcy—we do not have as high a number of bankruptcy filings as we do now.

Mr. President, with that somewhat pointed reaction to some of the statements the Senator from Minnesota legitimately brought to the floor—but I think he is wrong in his approach in what he is saying—I hopefully have put another side of the coin out there for people to consider. That is a strong basis for why this legislation should be before us, why it is before us, and why it needed to come here in a fairly unconventional way.

I am glad we are having a chance to debate the merits of the bankruptcy reform conference report today, and for a short time tomorrow, before we vote tomorrow on sending it to the President.

When the Senate last considered this bill, we heard a lot about the declining number of bankruptcies. Our opponents pointed to a temporary downward spike in the number of bankruptcies to say that this bill is not needed. They have said the economics have taken care of the situation. Not so. Even with a slight downturn, having 1.3 million bankruptcies, when we are in our 9th or 10th year of recovery, is an unconscionable index for bankruptcies. That is why the very liberal bankruptcy legislation that was passed in 1978 has to be changed somewhat, so that the legislation does not encourage bankruptcies, so that, in fact, it encourages those who have the ability to repay to know that they are never going to again get off scot-free.

I said just a few minutes ago that I was going to point to a study that would take away any weight to the arguments that we do not need this bill because there has been a downturn in the number of bankruptcies in the last year. This new study predicts that bankruptcies will rise by 15 percent next year. This was reported in the December 1st Wall Street Journal. The research was done by SMR Research Corporation, a consumer-debt research firm in Hackettstown, NJ. The SMR Research president, Stuart Feldstein, said this as a result of their study:

But now that we've caught our breath, they're [meaning bankruptcies] about to go way up again. We're on the verge of another flood.

The suggestion is that they will increase by 15 percent.

That is what we are facing: Another flood of bankruptcies. We have our critics, with their heads in the sand, acting as if there is nothing for us to worry about. The fact that we have a bankruptcy crisis on our hands—and have had for several years—and it looks as if things are going to get even worse, is an unconscionable situation when we can do something about it.

That is why we need to pass this bill, and we need to pass it right now. The bankruptcy reform bill will do a lot of good for the American people. More importantly, it is going to do a lot of good for our economy.

This bill will avert a disaster for our economy. There are signs that the economy is slowing down. There are signs that we are in the middle or at the beginning of a Clinton era recession. Remember, President Clinton is President of the United States. The manufacturing sector is already in a recession. Several other indices in the last couple months have shown downward trends. If they continue, obviously, we will be in a recession. That recession is probably apt to happen when we have a President Bush.

I want to make it clear right now: We are not going to let that be a Bush recession, if the downturn started in a Clinton administration. We are not going to let the Democrats get away with taking credit for a recovery in 1993 that started 8 months before the election of President Clinton in 1992. That is when the recession of 1990–1991 turned around. It was 1992. Yet from February through the middle of November 1992, somehow we were still in a Bush recession, not in a recovery that happened in February 1992. But just as soon as Clinton was elected, it was all over.

The media weren't doing their job or it would never have been reported that way or the hysteria Clinton provided the country in 1992 would have never taken root. But we are in a situation now where there will be some people, if there is a downturn next year, who are going to want to blame the new President for that. They won't be able to, if it started now.

I hope these indices will turn around. I think we have an opportunity, under a new President with the proper economic policies in place and fair tax cuts that the working men and women of America are entitled to, to do some things to make sure that such a situation doesn't happen. But right now, we have had 9 years of growth, starting at the tail end of the last Bush administration. Yet we have the highest number of bankruptcies over a long period of time, and it is presumably going to get worse. If we have a recession, they are going to get a lot worse. That is why we need this legislation.

We have also seen quite a fall in the stock market recently, and we know that Americans are anxious about their economic future. If we hit a recession without fixing the bankruptcy system, we could face a situation of bankruptcies spiraling out of control. The time to act is now before any recession is in full swing.

As I did earlier this year, when we voted on cloture on this bill, I will summarize a few of the things that are in the bill that my colleagues may not know are there as a result of the disinformation campaign waged by our liberal opponents.

Right now, farmers in my State and in Minnesota—maybe in every State but particularly in the upper Midwest where it is a grain growing region and we have a 25-year low in grain prices—have no chapter of the bankruptcy code that fits them and their own special needs. They did from 1933 to 1949. Then they didn't have it. They have had it as a result of my getting it passed in 1986, a chapter 12 for farmers. But it has lapsed now because the people on the other side of the aisle, who every day talk about helping the American farmer, are voting against this bill or stalling it. And chapter 12 has lapsed, so there is no chapter 12 to help farmers. Yet we have farmers facing foreclosure and forced auctions just because chapter 12 of the bankruptcy code, which gives essential protections for the family farmers, expired in June of this year. It expired for the reasons I gave.

Shame on those who are blocking us from doing the right thing by reinstituting chapter 12 and going beyond how we have normally done it, just do it for a few years at a time. In this bill we say that farmers are entitled to the same permanency of their chapter in the bankruptcy code as the big corporations have in chapter 11, as small business and individuals have in chapter 13. We are not going to leave farmers then with this last ditch effort.

We went beyond that because we have also changed the tax laws so that farmers will be able to avoid capital gains taxes when they are forced to sell something by the referee of bankruptcy. This will free up resources then to be invested in a farming operation that would otherwise go down the black hole of the IRS.

We have a fundamental choice. The Senate could vote as the Senator from Minnesota wants us to vote, and the Senate would then kill this bill and leave farmers without this safety net, or we can stand up for the farmers. We can do our duty and make sure that the family farmers are not gobbled up by giant corporate farms when they are forced into foreclosure. We can give farmers in Iowa and Minnesota a fighting chance.

I hope the Senate will stand with the farmers of Iowa and Minnesota and other farmers around the United States on supporting this legislation. I hope the Senate doesn't give in to the liberal establishment which has decided to fight bankruptcy reform no matter who gets hurt or what the cost is to the farming operators.

There are a lot of other things in this conference report. The bill will give badly needed protection for patients in bankrupt hospitals and nursing homes. The Senate adopted this as an amendment. I offered it. It was accepted unanimously. Again, my colleagues may be unaware of the fact that there aren't any provisions in the bankruptcy code to protect people in nursing homes, if that nursing home goes into bankruptcy. By killing this bill, they are killing some of that protection.

I had hearings on the fate of patients in bankrupt nursing homes in my judiciary subcommittee. As my colleagues know, Congress is still trying to put more money into nursing homes through the Medicare Replenishment Act that is now before the Senate because of nursing homes being in bankruptcy. So the potential for real harm to nursing home residents is there. I would like to provide an example of that.

Without the patient protections contained in this conference report, we learned, through our hearing process, of a situation in California where the bankruptcy trustee just showed up at the nursing home on a Friday evening and evicted residents. The bankruptcy trustee didn't provide any notice that this was going to happen. There was no chance to relocate the residents of the nursing homes. The bankruptcy trustee literally put these frail elderly people out onto the street and changed the locks on the doors so they couldn't get back into the nursing home. But this bankruptcy bill will prevent that from ever happening again.

If we don't stand up and say that residents of nursing homes can't be thrown out onto the street, then Congress will fail in its duty to these people.

Again, we have no choice. We can vote this bill down and tell nursing home residents and their families that it just doesn't matter to anybody in the Senate. That is the end result of the position advanced by the Senator from Minnesota. I hope the Senate is much better at humanitarian responsibilities than that. I hope the Senate stands for nursing home residents and not for the inside Washington liberal special interest groups that don't care about some nursing home resident being out on the street on a Friday night.

There is more to this bill. The bankruptcy reform bill contains particular bankruptcy provisions advocated by Federal Reserve Chairman Alan Greenspan and Treasury Secretary Larry Summers. I think both of these people—for the benefit of the Senator from Minnesota—are appointees of President Clinton. They have good things to say about the need for bankruptcy reform. These particular provisions I am talking about 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. As I said earlier, we are seeing the early warning signs of a recession. We need to put these safeguards into place so that the financial markets, which are the key components of our economy, don't face the unnecessary risk of what might be the beginning of a Clinton recession.

Again, we have a very fundamental 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. So I think the American people do in fact want us to strengthen the economy, not turn a deaf ear to pleas for help from the Chairman of the Federal Reserve and the Treasury Secretary. I hope the Senate decides to vote to safeguard our prosperity and not put it at risk.

At this point, I will talk about the issue of how the bankruptcy bill will impact people with high medical expenses. I am going to refer to a nearby chart. Earlier this year, I had an opportunity to address this very issue. I want to assure my colleagues with any remaining questions about the full deductibility of health care costs to a person going into bankruptcy, whether or not those are factored into the ability to repay, and the answer is, yes, 100 percent. I know the Senator from Minnesota has heard my explanation on that. I haven't heard him contradict anything I have had to say that the General Accounting Office has said to back this up. Yet he will continually come to the floor of the Senate and make the same point that it could be possible for people with high medical expenses not to be able to go into bankruptcy and get those considered as part of the process of discharge or not.

The bankruptcy bill says people who can repay a certain amount of their debt can't file for chapter 7, the point being that they are then channeled into a repayment plan under chapter 13. At this time, the question of medical expenses comes into play when determining whether someone has the ability to repay their debt. According to the nonpartisan General Accounting Office, the conference report before the Senate allows for 100-percent full deductibility for medical expenses before examining repayment ability.

Right here you have it, from the IRS—other necessary expenses that are deducted. It says that no standard other than expense must be necessary and reasonable. But it says it includes such expenses as charitable contributions, child care, dependent care, health care. Right now I emphasize the words ''health care'' because that is what we are being told by the Senator from Minnesota—that that would not be deductible. It says payroll deductions such as union dues and life insurance.

So maybe all of those things together would tell people that there are assurances way beyond just the health care expense issue of the deductibility. But it also emphasizes in this General Accounting Office report that we take care of all of the concerns anybody ought to have in that particular area. So, bottom line: If you have huge medical bills, you get to deduct them in full before even looking at whether you get channeled into a repayment plan. So I don't know what could be more fair and how it could be any clearer.

The Senator from Minnesota has told us he wants to learn more about this bankruptcy bill. It is quite obvious that he needs to know more about this bankruptcy bill. So I hope he does, and I hope he will let me talk to him, because once we look into this bill in its totality, I am confident that Members of the Senate will do the responsible thing and will vote for final passage tomorrow at 4 o'clock.

I ask unanimous consent that the article from the Wall Street Journal previously referred to be printed in the RECORD.

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

[From the Wall Street Journal, Dec. 1, 2000]

BANKRUPTCY PACE FOR INDIVIDUALS IS ACCELERATING

(By Yochi J. Dreazen)

When the nation's bankruptcy rate started to drop last year, John Garza felt the impact almost immediately. Business at his suburban Maryland bankruptcy law slowed so much that he was forced to let half of his 15 attorneys go, and several of the survivors quit in frustration over their reduced earnings. Mr. Garza, for his part, had time for other pursuits. ''I played a ton a golf,'' he remembers.

These days, tee times are down and court time is up. The caseload of Mr. Garza's firm rose more than 15% last month alone, leading him to hire a new attorney. ''We're like vultures perched on the telephone pole, waiting for the disaster so that we can eat,'' he says of his firm, which handles both personal and business bankruptcies. ''Well, the vultures are about to spread their wings.''

With interest rates up and the economy slowing, many households are discovering that their bills for years of torrid spending are coming due just as they are ill prepared to pay them. As a result, growing numbers of Americans are seeking court protection from

their creditors. Personal bankruptcies, as measured by a 12-week moving average of filings, have increased nearly 10% since January. The moving average hit 24,288 for the week ending Nov. 4, up from 22,291 in the week ending Jan. 1, according to data from Visa.

Extended over an entire year, that pace would translate into about 1.26 million personal bankruptcy filings, a notch lower than the 1.28 million filings recorded last year. Indeed, after rising steadily for most of the past decade, personal bankruptcies fell in 1999 amid low interest rates and solid wage gains associated with the nation's ultratight labor market.

But what concerns many analysts is that the pace of bankruptcies appears to be accelerating. SMR Research Corp., a consumer-debt research firm in Hackettstown, N.J., estimates that bankruptcy filings will rise as much as 15% next year, easily surpassing 1998's record 1.4 million filings.

''We've just finished one of the plateau periods for bankruptcies, which hit a peak in 1998 and then fell a bit,'' says SMR President Stuart Feldstein. ''But now that we've caught our breath, they're about to go way up again. We're on the verge of another flood.''

If the projections hold up, an increase of that size would probably bolster congressional efforts to tighten the nation's Bankruptcy Code. Legislation making it harder for Americans to discharge their debts passed the House this year but got tangled up in partisan wrangling in the Senate. Supporters have promised to try again next year.

Bankruptcy takes a heavy human toll, and many of those seek protection from their debts see it as a humiliating admission of failure. But the economic costs can also be substantial. Creditor losses from debts erased by bankruptcy run into the tens of billions of dollars each year. The filings, meanwhile, may be the harbinger of a significant slowdown in consumer spending that could make a ''soft landing'' for the U.S. economy nearly impossible.

Here's why: The consumer-spending binge of the early 1990s was built on a fragile foundation of massive household borrowing, so for spending to keep pace going forward, borrowing would have to continue to increase as well. But the current increase in the number of bankruptcies means that many households are having a hard time repaying existing debts, suggesting they'll be far less eager to amass new ones. And with Americans already spending every dollar they earn, a reluctance to borrow more money means the pace of consumer spending can only slow, serving as a significant drag on the broader economy.

Yesterday, a new government report on personal income suggested that consumer spending will advance at an annual rate of just 3% this quarter, far slower than the 4.5% pace recorded a quarter earlier. The weaker pace could easily translate into a relatively weak holiday season for the nation's retailers.

Micole Farley, a 25-year-old single mother from Houston, will be one of those doing a lot less shopping this holiday season. As a teenager in the early 1990s, she was surprised to find herself quickly approved for numerous credit cards, part of the seemingly endless stream of easy credit that continues to wash over many Americans. (With credit plentiful, consumers owed $591 billion in revolving credit debt in 1999, nearly double the $276.8 billion in debt amassed in 1992.)

Young and in love, Ms. Farley had run up $1,500 in credit-card debts by 1994, buying clothing, shoes and housewares for herself and her then-boyfriend. When she got pregnant and had to quit her job a short time later, though, Ms. Farley watched with alarm as finance charges and high interest rates sent her bills spiraling higher. By 1999, she was divorced and the debt had ballooned to nearly $5,000.

''I just can't afford to shop like I used to,'' says Ms. Farley, who's trying to avoid bankruptcy. ''I have enough bills as it is.''

Although many households are struggling to repay their debts, low-income Americans have been among the first to feel the strain. About 10% of households making less than $50,000 were more than 60 days late on at least one loan payment, a recent survey showed, compared with less than 4% of the families earning more than that amount. With the labor market easing, moreover, it's becoming harder for low-income Americans to work the extra hours or second jobs needed to earn the money to repay their debts.

Americans are also feeling the sting of higher interest rates. The Federal Reserve has increased them six times since June 1999 in an effort to cool the economy. Mr. Feldstein argues that the number of bankruptcy filings has actually been increasing steadily since around 1985, with the only exceptions coming immediately after periods in which interest rates fell sharply, reducing the cost of borrowing money. When the Fed cut interest rates in 1998 in the wake of the Asian currency crisis, for example, bankruptcies dutifully fell a year later.

''Interest rates quell the bankruptcy rate temporarily, but when rates go back up, bankruptcies resume their climb,'' Mr. Feldstein says.

Mr. GRASSLEY. Mr. President, since I don't see any colleagues here on the floor wanting to speak, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. FEINGOLD. Mr. President, I would like the opportunity to address the bankruptcy issue, and I am here to say that I am very disappointed that the majority leader chose to bring this bankruptcy bill back to the floor.

Let me remind my colleagues that the House passed this conference report on October 12, and the majority leader first moved to proceed to the conference report on October 19—well before the election. He could have sought and invoked cloture on the bill and had this final debate any time in the month before the election. Instead, he waited until right before the election, and then was unable to get cloture because many Senators, of course, were back home in their States campaigning.

In this lame duck session when we ought to be doing only the business that is essential to keep the Government running and leave substantive legislation to the representatives of the people who were duly elected on November 7, only now has cloture been invoked and we are headed for a vote on final passage. We are here in a lame-duck session, taking final action on an extraordinarily important and controversial and far-reaching substantive legislation.

The American people didn't vote for this Senate on November 7. With all due respect, they voted for a new Senate, with a decidedly different makeup. Why did the majority leader bring up this bill again? Why is he trying to put this bill through in this lame-duck session? The Senate is going to have a very different makeup in a month, and this legislation might turn out very differently in the next Congress. I suppose because we are all eager to finally bring this Congress to a close he thought there would be pressure on those Members who oppose the bill to relinquish the debate time the Senate rules provide for and let the bill go to final passage without a fight.

The supporters of this bill want to get this over with, pass the bill, and send it to the President where it will certainly meet a veto pen or perhaps a veto pocket, depending on when the other business of the Senate is completed.

Before we recessed for the election, I spoke at some length about the very regrettable procedure that was used to bring this bankruptcy bill back to the floor. I continue to believe that allowing four Senators meeting in secret in a conference committee to write the final version of the bill that we are now considering is a terrible affront to the tradition of reasoned deliberation in this body. As I said before, this procedure diminishes the Senate floor in favor of the backroom conference committee chosen to address these issues by none but themselves, accountable to none but themselves and open to observations by none but themselves. This procedure sets a terrible precedent for our work, and I sincerely hope it will never be used again.

I would be remiss in my responsibilities as a Senator if I did not also speak about the terrible damage that this bill will do to the bankruptcy system in our country and, even more importantly, to so many hard-working American families who will bear the brunt of the unfair so-called reforms that are included in this bill. It is a good thing that this bill will not become law.

The President's veto, whether by pocket or by pen, will protect our country's most vulnerable citizens from a harsh and unfair measure pushed through this Congress by the most powerful and wealthy lobbying forces in this country. President Clinton will do a service to those citizens by standing up to powerful special interests and vetoing this bill in the waning days of his administration.

First, let me talk about what is not in this bill, which is directly related to the fact that powerful special interests have had the chance to shape it. As I have discussed on this floor before a number of times, this bill is not a balanced piece of legislation. The interests that are the strongest supporters of this bill—the credit card companies

and the big banks—succeeded in limiting the provisions that will have any effect on the way they do business. These interests gave us and our political parties millions of dollars of campaign contributions and they like the results they achieved in this bill.

Billions of credit card solicitations go out each year to consumers—not millions but billions. Most experts agree that part of the rise in bankruptcy filings over the past decade, although the number is actually now on the way down, is due to credit card companies and the banks irresponsibly extending credit to people who have already shown they cannot handle additional debt.

I have next to me a pile of credit card solicitations. This pile of solicitations was collected by just one of my staff members over the past year and a half since this bill was marked up in the Senate Judiciary Committee. These were sent to his home. This pile of solicitations, 85 in all, came in the mail to one person—one person—in the last 19 months. I am sure that the member of my staff is a very creditworthy individual, but 85 offers for a new credit card—and these direct mail offers don't include the constant invitations for credit cards that people see every day on the Internet and on the TV.

This industry's sales techniques are out of control. The credit card companies are making bad decisions every day, and now they are here before this Congress asking for our help. Boy, did we give it to them. This bill is a bailout for the credit card industry. It is going to make it easier for credit card companies to collect more on the bad decisions they have made, the credit they have extended to people who already have maxed out on 2, 5, even 10 credit cards. Make no mistake, giving the credit card companies more power will work to the detriment of women and children trying to collect alimony and child support.

If we are going to pass a credit card industry bailout bill, the least we should do is help save the industry from itself by taking some steps to make sure consumers are made more aware of the consequences of taking on ever-increasing amounts of debt. We had the chance in this bill to require credit card companies to be more open with consumers about the consequences of running a balance on a card, but we didn't do it. We need more prevalent and more detailed disclosures on credit card statements and solicitations. There are limited disclosure requirements in the bill, but they don't go far enough, in my opinion. I think it is clear that the main reason they don't is the power of the credit card companies.

A few days ago the Wisconsin State Journal, a newspaper in my home area which is generally perceived as a conservative, quite probusiness newspaper, summarized well my concern about the extent to which this bill gives the credit card industry what it wants. I ask unanimous consent the Wisconsin State Journal editorial from December 4 be printed in the RECORD.

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

[From the Wisconsin State Journal, Dec. 4, 2000]

BANKRUPTCY REFORM BILL IS A BUST; LET CREDIT CARD ISSUERS PROTECT THEMSELVES WITH SOUND LENDING PRACTICES, NOT BY RIGGING BANKRUPTCY LAW IN THEIR FAVOR

When the credit card industry came to Congress to ask for help in collecting debts from deadbeats, Congress should have said:

It's not government's job to bail you out. Why don't you tighten up your own lending practices?

Instead, Congress let the industry turn a bankruptcy reform bill into a debt collection assistance plan.

That's why, when the Senate goes back to work this week, it should vote down the bankruptcy reform bill and spare President Clinton from following through with his threat to veto it.

The bill, already passed by the House, is touted as an answer to the questions created by a rapid rise in the number of petitions for bankruptcy filed annually. The surge in annual bankruptcy filings from about 300,000 in the early 1980s to 1.4 million in 1998 occurred during relatively good economic times, prompting complaints that abuse of bankruptcy law had become too common.

Indeed, there was evidence that some people were using the law to escape debts while living it up on wealth protected from creditors' reach.

In response, Congress began to work on bankruptcy reform legislation. For guidance, the House and Senate had before them 172 recommendations from the National Bankruptcy Reform Commission, which was led by Madison attorney Brady Williamson. The commission had stressed that bankruptcy law must remain balanced: It must work for creditors and debtors.

But the congressmen also had before them lobbyists for the credit card industry and similar lenders. Quickly, bankruptcy reform legislation became a campaign fund-raising bonanza for the politicians, with the lending industry ''investing'' $20 million in contributions. Just as quickly, bankruptcy reform turned into the credit card industry's bill.

The industry's goal was to tilt bankruptcy law in its favor. The banks and retailers that issue credit cards make money when their card holders run up large balances and pay the card's high interest rates. That's why the card issuers try to put the cards in the hands of as many people as possible, even people who are poor credit risks.

But there's a consequence: Sometimes people file for bankruptcy, and their debts are reduced or discharged.

The industry wanted to use bankruptcy reform to escape that consequence of their risk taking—they wanted to rig the law to keep people out of bankruptcy court so the debts could be collected. Moreover, they wanted to escape the expense of being careful about whom they issued cards to.

So, the House and Senate included in their reform bills provisions to make it harder for people to file under Chapter 7 of bankruptcy law, which basically allows a filer to wipe away debts, or harder to file for bankruptcy at all.

The bill is atop the Senate's agenda for its lame-duck session this month. Wisconsin Sens. Herb Kohl and Russ Feingold are prepared to oppose the bill, but the Republican leadership believes it has the votes to pass it.

Bankruptcy law does need some reform. But this bill is not it. Furthermore, there's no rush. Bankruptcy filings have declined more than 10 percent since 1998, suggesting that the sense of urgency. Congress had when it took on the reform may be out of date.

The proposal should be killed, and Congress should start anew next year.

Mr. FEINGOLD. Mr. President, I will quote from the editorial:

When the credit card industry came to Congress to ask for help in collecting debts from deadbeats, Congress should have said: It's not government's job to bail you out. Why don't you tighten up your own lending practices? Instead, Congress let the industry turn a bankruptcy reform bill into a debt collection assistance plan.

The editorial continues:

The House and Senate had before them 172 recommendations from the National Bankruptcy Reform Commission, which was led by Madison attorney Brady Williamson. The commission had stressed that bankruptcy law must remain balanced: It must work for creditors and debtors.

But the Congressmen also had before them lobbyists for the credit card industry and similar lenders. Quickly, bankruptcy reform legislation became a campaign fund-raising bonanza for the politicians, with the lending industry ''investing'' $20 million in contributions. Just as quickly, bankruptcy reform turned into the credit card industry's bill.

My colleagues are well aware of my concern about the influence of money on politics and policy. As I have said a number of times on this floor over this past year, this bankruptcy bill is really a poster child for the need for campaign finance reform. You only have to look at what the credit card industries get in this bill and, just as importantly, the disclosure that consumers don't get to understand that.

There is another thing missing in this bill. Remember, this bill is supposedly designed to end the abuses of the bankruptcy system by people who really can't afford to pay off more of their debts. But the biggest abuses, and all the experts agree on this, come when wealthy people in certain States file for bankruptcy by taking advantage of very large or unlimited homestead exemptions that are available in their States. Some people with large debts even move to a State such as Florida or Texas where there is an unlimited homestead exemption specifically for the purpose of filing for bankruptcy.

The National Bankruptcy Review Commission and virtually all leading academics believe that homestead exemptions are being abused and that a national standard is, indeed, needed. And, by a vote of 76–22, the Senate adopted a very good amendment from my colleague, the senior Senator from Wisconsin, which would have closed the loophole. That amendment would have put a $100,000 cap on the amount of money that a debtor shield from creditors through the homestead exemption.

But almost unbelievably, after that overwhelming bipartisan vote in the Senate, that amendment was stripped out of the bill by a group of Senators—again working in secret—and it was replaced by a weak substitute. The bill

that has been stuffed into this conference report limits the homestead exemption to $100,000 but only for property purchased within 2 years of filing for bankruptcy. That means that wealthy debtors can plan for bankruptcy by moving to an unlimited homestead exemption State, buying a palatial estate and putting off their creditors for 2 years before filing bankruptcy. If they do that, they can continue to shield millions of dollars in assets and throw off their debts with the bankruptcy discharge.

The bill will have no effect on this abuse of the bankruptcy system. This bill will not close the homestead exemption loophole of people like Burt Reynolds and Bowie Kuhn have used in the past. Supporters of this bill have chosen to ignore reforms that would give this bill real balance. Somehow the interests of wealthy debtors who use the homestead exemption to abuse the bankruptcy system are more important than the interests of hardworking Americans who, through no fault of their own, whether from a medical catastrophe or the loss of a job or a divorce, are forced to seek the financial fresh start that bankruptcy has made possible since the beginning of our Republic.

It is interesting, and very revealing, to contrast the treatment by this bill of wealthy homeowners who abuse the bankruptcy system with how it treats poor tenants who need the protection of the bankruptcy system to keep from being thrown out on the street while they try to get their affairs in order. As I mentioned, the provision dealing with the homestead exemption is virtually meaningless. At the same time, the bill includes a draconian provision that denies the bankruptcy stay to tenants trying to hold off eviction proceedings, even if they are able to pay their rent while the bankruptcy is pending. I think this provision—I hesitate to use this language—has become something that is purely punitive. It will have no impact at all on getting debtors to pay past due rent. It will result in people being evicted who are not abusing the bankruptcy system, but who are trying to use it for exactly the purpose for which it was intended—to get a fresh start and become once again productive members of our society.

When the bankruptcy bill was before the Senate at the beginning of this year, I tried very hard to pass an amendment that would have made the bill less harsh on tenants while at the same time denying the protection of the automatic stay to repeat filers who are abusing the system, and who, as I understand it, were the whole reason why they want to change the provision. I listened to the arguments of the Senator from Alabama who had concerns about my original amendment. What I did then was to modify the amendment to take account of some reasonable hypothetical situations that the Senator from Alabama came up with in our debates in committee and then here on the floor. But the realtors strongly opposed my amendment and the Senate rejected it by a nearly party line vote. That was unfortunate. It confirmed my view that this bill is not balanced. It is not rational. It is about punishing people, not just stopping the abuses that we all agree should be stopped.

Shortly before the election, the Senator from Alabama was on the floor once again arguing that this bill is necessary to crack down on tenants abusing the bankruptcy system to live rent free. My amendment would have cracked down on those abusers too, but without harming good faith debtors who need the automatic stay of an eviction to avoid homelessness and be able to pay some of their debts. The failure of the majority to recognize the harshness of the bill on this point and accept a reasonable amendment that deals with the abuse just as effectively was a great disappointment to me. It reinforced by judgment that this bill is not balanced, it is not fair.

Let me turn to what proponents view as the central feature of this bill, the means test. After much work, I believe this feature of the bill is still flawed and unfair. The means test is the mechanism that the bill's proponents believe will force people who can really some portion of their debts into Chapter 13 repayment plans instead of Chapter 7 discharges. The means test requires every debtor to file detailed information on their expenses and income which is then analyzed according to a formula. Those who pass the means test can file a Chapter 7 case; those who fail would have to file under Chapter 13.

The bill that is now before us includes an important ''safe harbor'' for debtors who are below the median income. The means test does not apply to them. That is a good thing, since studies show that only 2 or 3 percent of debtors would be required to move from Chapter 7 to Chapter 13 under the means test. But even with that ''safe harbor,'' the bill has significant problems. First, the bill specifies that for purposes of determining the safe harbor, the median income for each individual state should be used, rather than the higher of the state or national median income. This will unfairly disadvantage people who live in high cost areas of low median income states. In the Senate bill, we included a safe harbor from creditor motions that applied to people with income less than either the national or the median income. The people who drafted this final bill ignored that standard. I doubt they really believe it will mean that more abusers of the system will be caught by the means test. But they did it anyway, giving further evidence of the arbitrary nature of this bill.

In addition, the means test still employs standards of reasonable living expenses developed by the Internal Revenue code for a wholly different purposes. These standards are too inflexible to be fair in determining what families can live on as they go through a bankruptcy. They are arbitrary. And they are also ambiguous with respect to things like car payments because they were not designed to be used in this context. We have pointed this out repeatedly over the past few years, but the sponsors of the legislation have insisted on using these inflexible IRS standards.

The safe harbor from the means test also inexplicably counts a separated spouse's income as income available to a mother with children who has filed for bankruptcy, even if the spouse is not paying any child support. This can't be fair. Let me repeat that. Mothers filing for bankruptcy because their spouses have left them are treated for purposes of the safe harbor as if the spouse's income is still available to them. That is what the bill we are about to vote on does. It makes no sense. It is arbitrary and punitive.

But perhaps the thing that is most curious about the means test is that while we now have a safe harbor for lower income people, they still have to fill out all the same paperwork, doing all of means test calculations using the IRS expense standards. Why is that? If the intent is to exempt lower income debtors from the means test, why have them go through the means test anyway? The burden of the means test for these people is not the result—a tiny percentage would ever be sent to Chapter 13 because of it. No, it is the burdensome paperwork that is the problem. This bill makes it more difficult to file for bankruptcy. By leaving the paperwork requirements in place, the means test remains a barrier for low income debtors, even with the safe harbor.

Let me give you one example. This bill would deny the protection of bankruptcy to a single mother with income well below the State median income if she does not present copies of income tax returns for the last 3 years, even if those returns are in the possession of her ex-husband. I can see no justification for this result whatsoever.

So for those supporters of the bill who trumpet the safe harbor, I ask you: Why doesn't the bill apply the same safe harbor to creditor motions as the Senate bill did, and why doesn't it exempt people who fall within the safe harbor from the paperwork requirements? I have yet to hear reasonable answers to those questions, which leads me to believe that there are no reasonable answers. This bill is arbitrary, and it is punitive.

This bill also includes a number of ''presumptions of nondischargeability'' provisions, which basically say, ''these debts can't be discharged in bankruptcy because we think they look like people are running up bills in contemplation of bankruptcy.'' In other words, they are abusing the system. They are accumulating debt with no intention of paying it off.

The problem is that these presumptions are unfair. So instead of being a

deterrent to abuse of the system, they are simply a gift to the credit industry, and a harsh punishment to hard working people trying to do the best they can to meet their obligations to their families. One such provision creates a presumption of nondischargeability if a debtor takes $750 of cash advances within 70 days of bankruptcy. Seven hundred fifty dollars in a little more than two months. That is not much. I think all of us can imagine a single mother with children who loses her job or has unexpected medical bills for her kids and has to use cash advances to buy food and for her family or pay her rent. But if that woman files for bankruptcy, the debt to the credit card company is presumed to be fraudulent. That means that the debt from those cash advances will not be discharged by bankruptcy. It will still hang over her head as she tries to get back on her feet and support her family after the bankruptcy proceeding is over. That is not balanced. Once again, this bill gives special treatment to credit card companies at the expense of the most vulnerable members of our society. It is arbitrary and punitive.

This example shows how empty the proponent's arguments are when they claim that the bill gives first priority to alimony and child support. The chairman of the Judiciary Committee had a big chart listing all the ways that the bill supposedly helps women and children. But, as has already been mentioned by other Senators on the floor, 116 law professors have written to us to contest that claim.

Let me quote from their letter because I think it is very important to hear these arguments in some detail. The letter says:

> Granting "first priority" to alimony and support claims is not the magic solution the consumer credit industry claims because "priority" is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95 percent of bankruptcy cases make no distributions to any creditors because there are no assets to distribute. Granting women and children a first priority for bankruptcy distributions permits them to stand first in line to collect nothing.
>
> Women's hard-fought battle is over reaching the ex-husband's income after bankruptcy. Under current law, child support and alimony share a protected post-bankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The credit industry asks that credit card debt and other consumer credit share that position, thereby elbowing aside the women trying to collect on their own behalf. . . . As a matter of public policy, this country should not elevate credit card debt to the preferred position of taxes and child support.

Mr. President, what the law professors point out so convincingly is that the key issue is not how the limited assets of a debtor are distributed in bankruptcy, but what debts survive bankruptcy and will compete for the debtor's income when the bankruptcy is over. In a variety of ways, this bill will encourage reaffirmation agreements and increase nondischargeability claims which will lead to more debtors having more debt that continues after bankruptcy.

That is what hurts women and children, not the priority of child support claims in the bankruptcy itself. The priority of claims in the bankruptcy itself is almost meaningless since in the vast majority of bankruptcy cases there are no assets to distribute. People are broke, and they do not have anything to sell to satisfy their creditors. That is why they file for bankruptcy. You can't squeeze blood from a stone.

One of the most interesting things about this bill, as I have seen in other legislation as well in recent years, is the almost Orwellian names of some of its provisions. There are a number of them. For example, there is a title of this bill with the name "Enhanced Consumer Protection," but many of the provisions in this title actually offer little, if any, protection at all. The weak credit card disclosure provisions are an example. Yes, those may be enhanced consumer protections, enhanced from nothing, but they are not considered sufficient by any organization, not one organization, whose primary concern is consumer protection.

There is another section with the so-called "Enhanced Consumer Protection" title called "Protection of Retirement Savings in Bankruptcy." That sounds pretty good. What the provision actually does is put a cap on the amount of retirement savings that is put out of reach of creditors in a bankruptcy proceeding. Before this bill, there was no limit at all on the amount of retirement savings that can be protected. So this bill is not an enhanced consumer protection at all. It is a step backward for consumers and hard-working Americans who tried to put aside some money for their golden years.

Incidentally, this provision is nowhere to be found in either the bankruptcy bill that passed the Senate or the bill that passed the House. This is one of those provisions that appeared out of nowhere. In fact, before a firestorm of criticism forced him to reconsider, the Senator who proposed this provision wanted to let consumers waive the existing protection of retirement savings in boilerplate consumer credit agreements. So the $1 million cap is an improvement over what the sponsors of this bill tried to do, but it is hardly a protection.

Here is another sort of Orwellian title. Section 306 is called "Giving Secured Creditors Fair Treatment Under Chapter 13." It ought to be called "Giving Certain Secured Creditors Preferred Treatment Under Chapter 13" because it favors those who make car loans over other secured creditors and over unsecured creditors.

Here is how it works. There is, of course, a concept in bankruptcy law currently called cramdown or stripdown. It recognizes the fact that the collateral for some kinds of loans can lose value over time so it may be worth significantly less than the debt owed. Remember that in a bankruptcy proceeding, secured creditors get paid first, but the cramdown concept says to those creditors that they only get paid first up to the amount of the value of the collateral for the loan. After that, if they are still owed money, they have to get in line with the other unsecured creditors.

To give a more tangible example, if someone owes $10,000 on a car loan, but the car which is collateral for that loan is worth only $7,000 now, then only $7,000 of that loan is considered secured in a bankruptcy. That makes perfect sense since the maker of that loan has the right to repossess the car, but if it does that, it can only get $7,000 when it sells the car.

What the bill does is eliminate the cramdown for any car that is purchased within 5 years of bankruptcy. That means that even though the vehicle that secures the loan has lost much of its value, the entire amount of the debt must be repaid in a chapter 13 plan. This gives special treatment to the lender and, more importantly, it will make it much more difficult for a chapter 13 plan to work, and that will hurt people who want to pay off their debts in an organized fashion under chapter 13.

Most people file chapter 13 cases because they want to keep their cars. The cramdown allows them to reduce their car payments to a reasonable amount, leaving enough money to pay off other secured creditors and make a repayment plan work.

According to the chapter 13 trustees who know what they are talking about since they deal with these cases day in and day out, this single provision of the bill will increase the number of unsuccessful chapter 13 plans by 20 percent.

Making it more difficult to get chapter 13 plans confirmed will lead to more repossessions of cars and ultimately to more chapter 7 filings. Even where a chapter 13 plan can be confirmed and is successful, the anticramdown provision will reduce the amount a creditor can pay to unsecured creditors or to child support or alimony. In essence, payments on a car worth far less than the debt are given priority over child support, another example of how this bill is arbitrary and punitive and how the claims of the bill's proponents that the bill will help women and children are empty indeed.

The anticramdown provision undermines the efficacy of chapter 13. All the experts tell us that. I have to point out the irony here. The avowed purpose of proponents of this bill is to move people from chapter 7 discharges to chapter 13 repayment plans. Yet the bill actually has the effect of undermining chapter 13.

There is even another provision in this bill that undercuts chapter 13. A small group of Senators who shaped

this bill in a shadow conference accepted a provision from the House bill that says for those debtors with income above their State's median income, chapter 13 plans must extend over 5 years rather than 3. That is a 66-percent increase in payments required to complete the plan. In view of the fact that the majority of 3-year plans fail, the requirement that the debtor go 2 more years without an income interruption or unexpected expenses will inevitably lead to an even higher rate of chapter 13 plan failures and discourage even more debtors from filing voluntarily under chapter 13.

As I have said before, this bill is really, in a way, at war with itself. Bankruptcy experts from around the country tell us clearly that it will not work. This bill will destroy chapter 13 as an option for many debtors. If we pass it, I am convinced we will be back here trying to fix it once it starts to take its toll on the American people. In the meantime, how many lives will be made harder? How much more heartache are we going to inflict on hardworking Americans?

I have spoken for quite awhile here about the problems with this bill. In fact, I am sorry to say, I have probably only just scratched the surface. This is an immensely complicated bill about a very technical area of the law. There are provisions in this bill that I would venture to guess that no one in this body really understands. Indeed, some of the statements by proponents of the bill indicate that they don't understand bankruptcy law or this bill.

This is the kind of bill where we need to rely on the experts to give us some real guidance. And we just have not done that here. Once again, we have a letter from 116 law professors. They are from all across the country. They are not debtors' lawyers, they are not all Democrats, they do not have an ideological agenda. They just understand the law and care about how it operates. And they are pleading with us. Let me quote from their letter:

> Please don't pass a bill that will hurt vulnerable Americans, including women and children.

That is what the 116 law professors say.

This is extraordinary. The experts beg us to listen to them. They do not have a financial interest here. They do not represent debtors. None of them is in danger of declaring bankruptcy. They just hate to see this Congress make such a big mistake in writing the laws. They do not want us to ruin the bankruptcy system, which dates back to the earliest days of our country, by passing a bill that is so unbalanced, so arbitrary, and so punitive.

We have one last chance to listen to these experts, one last chance to step back from the brink of passing a very bad law, a law that I believe we will come to regret. It is a matter of simple fairness and simple justice.

I want to assure my colleagues that I am not opposed to reform of the bankruptcy laws. I know there are abuses that need to be stopped. I voted for a bill here in 1998 that passed the Senate with only a handful of votes in opposition. There are things we can do—and should do—to improve the bankruptcy system. There are loopholes we can close and abuses we can address. We can do it in a bipartisan way. We can write a balanced bill that the Senate and the country can be proud of. We can rely on the advice of experts, as we have always done in this complicated area in the past. But we did not do that here. We relied on the credit card industry, which has showered Senators and the political parties with campaign contributions, and it shows.

I urge my colleagues to vote against this unfair bill. This Senate can do better, and we will do better next year if this bill is defeated.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I want to take this time during the debate on the bankruptcy bill to give a little bit of history on bankruptcy reform. I want to say a few words about how we thought about the proper role of bankruptcy over the course of our Nation's history.

Congress' authority to create bankruptcy legislation derives from the body of the Constitution, article I, section 8, clause 4, authorizing Congress to establish "uniform laws on the subject of bankruptcies throughout the United States."

Until 1898, we did not have permanent bankruptcy laws in our country. The previous bankruptcy laws that were on the books throughout that early 100 years were temporary reactions to particular economic problems, and with each successive bankruptcy act and each major reform of our bankruptcy laws, we refined our conception of how bankruptcies should promote the important social goal of giving honest but very unfortunate Americans a fresh economic start, while at the same time after giving that fresh start guarding against the moral hazard of making bankruptcy too lax, easy, and in fact encouraging bankruptcy.

Right now, I think we have a situation where too many Americans see bankruptcy as an easy way out. A huge majority of Americans recently told pollsters that bankruptcy is too easy and more socially acceptable than a few years ago.

I refer to the chart from Penn and Schoen Associates. The question they ask: "Is bankruptcy more socially acceptable than a few years ago?" You get an overwhelming 84 percent who say, gee, it is more socially acceptable. As few as 10 percent say that it is not more socially acceptable, and 6 percent said they did not have an opinion.

A very dramatically high proportion of the American people know that the present policies of bankruptcy in this country are not right, and they tend to encourage people to file for bankruptcy.

The bill we are considering today and tomorrow and will hopefully pass at 4 o'clock tomorrow under the unanimous consent agreement proposes fundamental reforms which are a logical outgrowth and an extension of our prior bankruptcy reform efforts.

From 1898 until 1938—a 40-year period of time—consumers had only one way to declare bankruptcy. It was called in the terms of the profession "straight bankruptcy." Today we refer to it as "chapter 7" bankruptcy. Under chapter 7, which is still in existence, bankrupts surrendered some of their assets to the bankruptcy court. The court then sold those assets—today, for that matter—and used the proceeds to pay creditors. Any deficiency then is automatically wiped out.

In 1932, the President recommended changes to the bankruptcy laws which would push wage earners into repayment plans. In the 1930s—in fact, specifically in 1938—Congress then created a chapter 13 in addition to a chapter 7. Chapter 13 permits but does not require a debtor to repay a portion of his or her debts in exchange for limited debt cancellation and protection for debt collectors' efforts.

Chapter 13 is still on the books to this day, although it has been modified several times. Most notably, modification to it came in the year 1978.

Under current law, the choice between chapter 7 and chapter 13 is entirely voluntary.

In the late 1960s, Senator Albert Gore, Sr.—the father of the Vice President of the United States—introduced legislation to push people into the repayment plans. This proposal was reported to the Senate as a part of a bankruptcy tax bill passed by the Finance Committee. But it ultimately died in the Senate.

Later, in the mid-1980s, Senator Dole on the part of the Senate and Congressman Mike Synar on the part of the House tried to steer higher income bankrupts—those who could pay some of their debt—into chapter 13. The efforts of Senator Dole and Congressman Synar ultimately resulted in the creation of section 707(b) of the bankruptcy code. This section gives bankruptcy judges the power to dismiss the bankruptcy case of someone who has filed for chapter 7 bankruptcy if that case is, in the words of the law, "substantial abuse" of the bankruptcy code.

While this idea sounds good and well intended, it has not worked well in the real world of people who do not pay their bills—and the people who enforce the bankruptcy laws and the lawyers who work with them.

First, the problem is that no one knows what the term ''substantial abuse'' actually means. We have conflicting court decisions around the country, and people just aren't sure what the rules are.

Second, creditors and private trustees are actually forbidden from bringing evidence of abuse to the attention of a bankruptcy judge.

Look at that situation.

No. 2, if somebody knows about abuse, and it is very obvious—and even if it isn't so obvious—they can bring it to the attention of the bankruptcy judge and something can be done about it. The law doesn't allow that to be done.

As well intentioned as what Senator Dole and Congressman Mike Synar ended up doing—their original intentions were right but they had to compromise to get it done in 707—it just hasn't accomplished what that compromise was supposed to have accomplished.

The bill before the Senate now corrects these shortcomings. Under the bill, 707(b) now permits creditors and private trustees to file motions and bring evidence of chapter 7 abuses to the attention of the bankruptcy judge.

People who oppose this bill find fault with that. If somebody is using the courts of the United States to help them along, and if they don't deserve that help and there is abuse of power of government to the detriment of creditors and particularly to the consumers, and as a result of 1.4 million bankruptcies in America a family of four pays $400 more for goods and services than they would otherwise pay—and that is wrong—what is wrong with that information being presented through the transparency process to the judge? We do that here. It should be done. I don't know why anybody would find fault where there is outright abuse being presented.

The change is very important, since creditors have the most to lose from bankruptcy abuse, and private trustees are often in the very best position to know which cases are abusive in nature. In certain types of cases where the probability of abuse is very high, the Department of Justice is required to bring evidence of abuse to the attention of bankruptcy judges. And they should be required to bring this abuse to their attention.

Additionally, the bill requires judges to dismiss or convert chapter 7 cases where the debtor has a clear ability to repay his or her debts.

Taken together, these changes will bring the bankruptcy system back into balance, particularly in relationship to the evolution of the bankruptcy code from an ad hoc sort of passage by Congress for the first 100 years—the last 100 years being more permanent, and in the last 20 years it has been very liberalized—to make it a little more balanced. It is a perfectly legitimate thing to do.

Importantly, these changes preserve the element of flexibility so that each and every debtor can have his or her special circumstances considered. This means that each bankrupt will have his or her own unique circumstances taken into account at the time of judgment.

As we consider this bill, I hope my colleagues will keep in mind the remainder of the bill, and the fair nature of this legislation as well as its historical roots.

I see that the Senator from Alabama has come to the floor. I think he is waiting to speak. Soon I will yield the floor.

But I also take this opportunity to praise, as I have had the opportunity in times past, the efforts of the Senator from Alabama to help us bring this bill this far, and for his willingness to be flexible in some things where he would like to go further in making sure that debts are repaid that maybe otherwise would not be repaired but understanding the extremes on both sides helping us to get to a middle so that a moderate bill such as this can become law. I thank, publicly, Senator SESSIONS of Alabama.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I express my appreciation and admiration to Senator GRASSLEY for his extraordinary patience, steadfast leadership, and efforts in moving this bill forward over a period of years.

Some say this has slipped through. We have had hearings for years. We have had debates on this floor for the last 2 to 3 years. It has passed every time overwhelmingly. But a small group is trying to identify certain little things when they put a spin on it to make it sound as if doing something about a bankruptcy system that is out of control is bad and is not a fair thing.

What we are saying fundamentally is, if you make above median income—for a family of four, I believe the median income is $45,000—and a judge finds you can pay some of your debts back, you ought to be able to pay that.

We have examples all over this country. If you talk to any of your bankers and hospitals in your community, you find people with high incomes are just walking away, wiping out all their debts and not paying them. They think it is cool and clever. But it is wrong.

When a person receives a value, receives a loan, he or she ought to pay it back if they can. America is very generous. If you cannot pay it back and you are in debt, you can file bankruptcy, wipe out all those debts, and start over free and clear.

What this legislation says is, most historically, the small number—and it is far less than 50 percent—who make higher incomes, if they can pay more, ought to. That is only fair and just.

Bankruptcy is a Federal court legal system. Bankruptcy judges are Federal judges. The whole bankruptcy code with which many lawyers have worked—and I have a bit over the years but never mastered; and as U.S. attorney, I had a couple of lawyers on my staff who worked bankruptcy regularly and we dealt with bankruptcy issues—this complex code states who gets what in bankruptcy and how much should be paid.

We found we have had a doubling in filings in bankruptcy in the last 10 years, during a time when the economy is doing exceedingly well. We have also found that lawyers—and I don't really blame lawyers; I am a lawyer; I practiced law; if the bankruptcy code gives me a clause somewhere that I can use to the advantage of my client to make them not pay a debt that the client probably should pay—I am going to take advantage of it. It is malpractice not to take advantage of that.

Whose responsibility is it if we create a bankruptcy code that has loopholes in it? It is our responsibility. If after over 20 years of this current bankruptcy bill, after over 20 plus years of experience, we see where the problem areas are, where the abuses are, it is our obligation, I think, to do something about it and fix it so that it operates fairly and so that people are treated as they should be treated.

What we are saying and what bankruptcy does is say that a person who incurred a debt, a person who received a benefit, doesn't have to pay for it. If you received a loan, they give you $10,000 and you go bankrupt, you don't pay your loan back. Sure, it hurts your brother-in-law who loaned it to you, your banker who loaned it to you, and it has financial repercussions. The bank has to charge higher interest rates when they have more defaults. Consumers pay for that, too.

It hurts that family who sits down on a weekly basis adding up their income around the kitchen table, figuring how to pay their debts. Some people don't; they go off gambling or they do other things. Or they have, in fact, a serious financial problem they can't deal with—a huge medical bill. Some families try to figure out a way to work through that; they should. Some can't, and they file bankruptcy.

All we are saying is, that that small percentage who is making above median income, who a judge believes can pay some of it, ought to pay it. Maybe it is 25 percent of the debts they owe, but they ought to pay that if they can.

It also does a number of things that Senator HATCH and Senator GRASSLEY have mentioned to raise the level of protection and benefits for children and divorced women through alimony. Alimony and child support become No. 1 protected items in this bill.

There have been some letters that Senator KENNEDY and others read that nobody supports this bill. He stated on the floor not one single organization that advocates for children supports this bill. These are his words: Not one single organization that advocates for women supports this legislation, there is not one single organization that represents working men and women that supports the bill, and that there is not

one single organization that represents the interests of consumers that supports the bill.

Well, that is not exactly correct. Interestingly, just yesterday I received four letters from organizations that represent the interests of all the groups referred to by Senator KENNEDY who do support this bill. Those four organizations writing letters in support of this bill include the National Child Support Enforcement Association.

I was attorney general for 2 years in Alabama, and we worked all kinds of ways to utilize the power of the State's attorneys to help increase child support collections. That is one of the main groups in America that does this—the National Child Support Association, the Western Interstate Child Support Enforcement Council, the California Family Support Council, and Attorney General Betty Montgomery of Ohio.

I will now tell you a little bit about the contents of the letters. The National Child Support Enforcement Association is committed to ensuring parents fulfill their responsibility to provide emotional and financial support for their children, including honoring legally-owed child support obligations. According to the organization, this bill will ''significantly advance their goal.''

I do not see how any person can stand on the floor of this Senate and not say this bill will enhance the ability of children to receive child support payments. In fact, it enhances it in a multiplicity of ways. It even puts the payments of child support above payments to the lawyers in the case, which may be one of the reasons we are having some objection to this bill.

The Western Interstate Child Support Enforcement Council's primary purpose is to ensure that child support workers have effective enforcement tools to carry out their mandated responsibility to establish and collect child support, feels that passage of this bill will ''greatly enhance [their] efforts in this regard by establishing an equitable system of debt repayment and discharge in bankruptcy proceedings.''

This is a strong and clear statement from this organization that cares about children, is dedicated to them, and is working on a regular basis.

According to Howard Baldwin, the president of WICSEC, the provisions of this bill:

> will re-prioritize the elements in bankruptcy plans by establishing child support as the debtor's primary obligation, with all other debts assuming a secondary role.
>
> As a result, our Nation's child support agencies will be able to pursue collection efforts without encountering the restrictions caused by existing bankruptcy proceedings.

This is another strong statement that they will be able to pursue collection efforts without encountering restrictions under the current bankruptcy laws.

The California Family Support Council also supports this bill.

At its Annual Training Conference held in February, 2000, the organization noted that:

> based on [its] experience . . . bankruptcy remains an impediment to [their] ability to collect support and [that is serves as] a haven for those who want to avoid their familial obligations.

As a result, the California Family Support Council's membership:

> feels strongly that this legislation will strenghten substantially the child support enforcement program and improve the collection of child support.

So if we don't pass this bill we are going to be continuing under a rule of bankruptcy law far less favorable to children than the ones in existence today.

Ohio Attorney General Betty D. Montgomery has strongly endorsed this bill. In her letter to Senators DEWINE and VOINOVICH, and Congressman STEVE CHABOT, General Montgomery recounted the improvements this bill makes over current law.

General Montgomery rightly notes that:

> current law places domestic support obligations 7th on this list of priorities. By providing that repayment of domestic support obligations move to the head of the list of priorities for debtors to pay in Section 212 of this bill, Congress will ensure that the spouse and the children will continue to collect support payments that are owed during the bankruptcy case. Under the bill, debtors who owe child support would have to keep paying after they file for bankruptcy and creditors could not seize previous payments, which is commendable.

What that means is this. Under current bankruptcy law, let's say there is a deadbeat dad who files bankruptcy and he still owes a lot of child support money. It is not dischargeable. He wipes out all his debts but his child support is not wiped out, he still owes that. If he moves off to another State, maybe halfway across the country, and they can't find him, it's hard to make him pay. Under this legislation, if he were certified as somebody with an income sufficient to be put into Chapter 13 and not just wipe out all his debts but had to pay some of those debts back, the first debts he must pay under bankruptcy court specific supervision would be this child support. If it is up to a period of 5 years, which it normally would be, he would be under court order. The mother/wife wouldn't need to hire a lawyer to chase the deadbeat dad all around the country, the bankruptcy judge would be there making sure he paid it. The first moneys that came in would have to go to that child support.

This is a historic step for children and families, and I believe we ought to recognize that. I am glad Attorney General Montgomery, the able Attorney General of Ohio who I was honored to know when I was Attorney General of Alabama, recognizes that and has stated it so clearly.

Finally, Phillip L. Strauss, assistant district attorney for the city and county of San Francisco, in a September 14, 1999, letter to members of the Judiciary Committee made known his unqualified support for this bill.

His 27 years in the DA's Office, Family Support Bureau, and his 10 years' experience as a bankruptcy law professor, convince him that this bill is a real improvement over the current bankruptcy law.

In his letter, responding to a July 14, 1999 letter from the National Women's Law Center, Strauss makes the point that none of the organizations opposing this bill in the NWLC letter have actually ever been engaged in the collection of support; Conversely, the largest professional organizations which do perform this function have endorsed the child support provisions of the Bankruptcy Reform Act as ''crucially needed modifications of the Bankruptcy Code which will significantly improve the collection of support during bankruptcy.''

Notes Professor Strauss:

> Most of the concerns raised by the groups opposing [this] bill do not, in fact, center on the language of the domestic support provisions themselves. Instead they are based on vague generalized statements that the bill hurts debtors, or the women and children living with debtors, or the ex-wives and children who depend on the debtor for support. It is difficult to respond point by point to such claims when they provide no specifics.

The crux of the main argument against this bill is:

> by not discharging certain debts owned to credit and finance companies, the institutions would be in competition with women and children for scarce resources of the debtor and that the bill fails ''to insure that support payments will come first.''

According to Strauss, ''nothing could be further from the truth.''

Indeed, under this bill, there are many protections for women and children over powerful credit and finance companies that exist outside of bankruptcy. Moreover, support claims are given the highest priority under this bill, while commercial debts do not have any statutory priority. Thus when there is competition between commercial and support creditors, support creditors will be paid first. And, unlike commercial creditors, support creditors must be paid in full when the debtor files a case under chapter 12 or 13.

In addition, support creditors will benefit—again, unlike commercial creditors—from Chapter 12 and 13 plans which must provide for full payment of on-going support and unassigned support arrears. Further benefits to support creditors which are not available to commercial creditors is the security in knowing that Chapter 12 and 13 debtors will not be able to discharge other debts unless all post-petition support and pre-petition unassigned arrears have been paid in full.

In other words, you cannot get discharged from your bankruptcy until you have paid your child support.

In conclusion, this bill is a much-welcomed improvement over current law—as noted by these five letters, written on behalf of organizations that deal

with these issues every day, in support of it.

The opponents should not oppose this bill just to oppose it—that is disingenuous. Mere opposition to any change in the present law, and vague claims that any and all attempts to address such existing abuses as serial filings are oppressive and will harm women and children, and does nothing to advance the proper understanding of the problems we are faced with, in my view.

I would just say, those things make it clear from professionals in the field that the legislation is not harsh toward children but, in fact, provides greater protections than they have ever had before, a fact which I assert is indisputable. Somehow, though, there is a feeling here that you just ought to have an untrammeled right, an unlimited right to not pay anybody you don't want to pay; that somehow there is no cost to society when people don't pay their debts.

There is a cost to society. There is a cost to you, to me, to everyone in this Chamber, and to everyone in this country because when more people do not pay their debts, the interest rate you pay for your loan has to go up because a part of the reason for an interest rate is the uncollectibility rate, and if a bank makes 100 loans and they collect 99 out of 100, they only have to factor in that percentage of that amount to pay for that one bad loan they write.

If only 95 out of 100 are being paid, or 90 out of 100, we will feel it in the interest rates. Who will be paying the higher interest rates? The ones who will be paying the higher interest rates are the people who manage their money, do the right thing, serve their country, train their children, and pay their debts, and we do not want them to feel like they are chumps, that they somehow are not smart. And a really smart person is the one who knows how to run up a bunch of debt and declare bankruptcy.

There is a problem into which this country is sliding. The real reason for the increase in bankruptcy filings in America is television advertisement. Turn on your TV. Do you have debt problems? Call old Joe the lawyer. It is 11 or 12 o'clock at night, people cannot sleep, they are worried about their debt. There it is. That is the answer. They go down, and the lawyer says: Give me $1,000.

Well, I don't have $1,000.

How much do you make?

My check is $500.

Save up two of those checks and bring them to me. Don't pay any other debt. Don't pay a dime on your credit card. Bring all that money to me. As soon as you bring it to me, I will file bankruptcy. I will wipe out all these debts. You can forget this.

That is what is happening. Do not think I am exaggerating. That is what is happening in America today. If their debts are high, they cannot pay their way out of it, it is hopeless for them and they have a low income, they ought to be able to start over again. Anybody who loans money to people who have low incomes and excessive debt—they have to be careful about loaning money. They know they are going to lose sometimes. Understand that.

I am not saying we will change that. In fact, I suspect that as high as 90 percent of the people who filed bankruptcy under straight bankruptcy, chapter 7, before this new bill was passed, would be able to do it afterwards. This bill will catch a lot of people who are abusing the system, and it will be a signal that Congress does care and does believe that if you can pay some of your debts, you should pay them.

We are going to insist you do, and we are not going to have a court system that allows wealthy people to just walk away from debts they honorably signed up to pay and dishonorably declined to make good on. We can do better.

There are a number of things I will say about this bill perhaps tomorrow. I do believe Senator GRASSLEY has done a superb job. It has been a matter of great debate. It came out of the Judiciary Committee by a vote of 16–2 on one occasion, maybe with only three dissenting votes on another occasion. It has passed this Senate with 80 or 90 votes more than once. Somehow always it comes up at the end of a session. It is dragged out. A small group fights it, and at the end they say: We are really for bankruptcy reform, but we are just not for this bill. We know there are abuses, but this bill is not fair. Or, the bill I voted on last time was changed in conference, so it is now bad; I am not voting for it now.

I do not think that is legitimate. If they study what is in here, they will see this is a fair bill, that it does close somewhat the homestead loophole about which some Senators have complained. Senator KOHL and I led the fight to eliminate the homestead loophole entirely. I thought it was an abuse, but we just did not have the votes to do entirely eliminate it, so resolved to make significant progress toward tightening it—and we have.

Not passing this bill is going to leave us with a total lack of control over the homestead issue. Passing this bill will eliminate fraud totally in the most extreme cases and tighten up the process. It will be a significant step forward, in my view, to controlling that abuse. That is what compromise is about.

Chairman GRASSLEY has done a great job working this bill to this point. I believe it is a piece of legislation that should pass, and I remain hopeful the President will sign it. If not, I am hopeful this Senate will be able to override that veto. Yesterday, we had a vote well into the sixties to invoke cloture.

Mr. President, I ask unanimous consent the letter dated October 19 from the NCSEA, the letter dated October 18 from Howard Baldwin, Jr., and the letter dated October 17 from the California Family Support Council be printed in the RECORD.

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

NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION,
Washington, DC, October 19, 2000.

President WILLIAM J. CLINTON,
The White House,
Washington, DC.

DEAR PRESIDENT CLINTON: As President of the National Child Support Enforcement Association (NCSEA), representing over 60,000 child support professionals across America, I'm writing to urge you to support the Bankruptcy Reform Act of 2000 (Conference Report 106–970 accompanying HR 2415). This legislation includes NCSEA's recommendations to restrict the dischargeability of child support obligations. NCSEA is committed to ensuring that both parents fulfill their responsibilities to provide emotional and financial support to their children—including honoring legally-owed child support obligations. The pending legislation will forward this goal significantly.

Specifically, NCSEA supports the child support bankruptcy provisions that: (1) exempt mandated child support enforcement tools from the effect of an automatic stay; (2) eliminate the dischargeability of all child support debt and treat all support debt in a similar manner; (3) give child support debt a high priority in bankruptcy payment plans; and (4) prevent confirmation of a bankruptcy plan or prevent discharge if a debtor's support payments are not current after a bankruptcy petition is filed.

Under current law, children are disadvantaged when the parent who owes child support seeks protection in the bankruptcy court. These families find themselves competing with other creditors for the debtor-parent's limited assets. Being on the losing end of this competition can have dire economic consequences. The family may be forced to seek public assistance. Families who have left welfare and are struggling to make ends meet are especially vulnerable, as illustrated by recent findings that for poor families not on welfare, child support represents fully 35% of household income, a critical supplement to the 48% earned from work.

The proposed bankruptcy reforms would also complement current efforts, which your Administration strongly supports, to distribute more child support to families rather than retaining such collections as reimbursement for government welfare benefits received. If bankruptcy reform is not passed, these collections will continue to be distributed to creditors ahead of the vulnerable families struggling to responsibly support their children by working instead of collecting welfare.

Back in the previous Congress, the same child support provisions as in the present bankruptcy legislation failed to be enacted when the overall bill (HR 3150) stalled due to disagreements over other bankruptcy provisions. Attached is the policy resolution NCSEA passed in 1998 supporting bankruptcy reform that will strengthen the collection of child support debt. The bill now under consideration accomplishes the goals of our resolution. We urge you to support the bill for that reason.

Thank you for your consideration. If you have questions, please contact NCSEA's Government Relations Director, Ken Laureys, at 202–624–5878 (klaureys@sso.org).

Respectfully,

LAURA KADWELL,
President.

WESTERN INTERSTATE CHILD SUPPORT ENFORCEMENT COUNCIL,
Austin, TX, October 18, 2000.

Re Bankruptcy reform conference report for H.R. 2415.

Hon. WILLIAM J. CLINTON,
President of the United States,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As President of the Western Interstate Child Support Enforcement Council (WICSEC), an organization comprised of child support professionals from the private and public sectors west of the Mississippi River, I would like to express our membership's unqualified support of H.R. 2415. The primary purpose of WICSEC is to ensure that child support workers have effective enforcement tools to carry out our mandated responsibility to establish and collect child support. The passage of H.R. 2415 will greatly enhance our efforts in this regard by establishing an equitable system of debt repayment and discharge in bankruptcy proceedings.

The current structure of the bankruptcy process allows child support obligors who file for protection under the Bankruptcy Code to repay debts to customary collectors, but does not hold them accountable for the ongoing financial support of their children. The provisions of H.R. 2415 will reprioritize the elements in bankruptcy plans by establishing child support as the debtor's primary obligation, with all other debts assuming a secondary role. As a result, our nation's child support agencies will be able to pursue collection efforts without encountering the restrictions caused by existing bankruptcy proceedings.

We greatly appreciate your demonstrated support of legislation which benefits families and children. At this time, we respectfully ask you to continue that commitment by signing H.R. 2415.

Sincerely.

HOWARD G. BALDWIN, Jr.,
President.

CALIFORNIA FAMILY SUPPORT COUNCIL,
Sacramento, CA, October 17, 2000.

Re Bankruptcy reform conference report for H.R. 2415.

DEAR MR. PRESIDENT: I am writing you on behalf of the California Family Support Council, an organization of professionals who are responsible for carrying out the federal child support program in California pursuant to Title IV–D of the Social Security Act. Our membership consists of approximately 2,500 persons employed by county and state agencies which administer the program.

Support of the bankruptcy reform legislation by the Council is reflected in the attached resolution, approved by the general membership at our Annual Training Conference in February of this year. It is based on our experience that bankruptcy remains an impediment to our ability to collect support and a haven for those who want to avoid their familial obligations. Our membership feels strongly that this legislation will strengthen substantially the child support enforcement program and improve the collection of child support.

Bankruptcy should no longer interfere with the payment of collection of support. This legislation is the first major revision of the treatment of support during bankruptcy since the Banruptcy Code was enacted in 1978. We strongly urge you to sign this legislation.

Respectfully,

KRIS REIMAN,
President.

CALIFORNIA FAMILY SUPPORT COUNCIL 2000—RESOLUTION II

Whereas the California Family Support Council is composed of state and local professionals who have the responsibility of operating the federal child support enforcement program in the State of California; and

Whereas the filing of a bankruptcy petition by debtors owing child support substantially impairs the ability of government and private child support creditors to enforce support obligations; and

Whereas the Bankruptcy Code conflicts in many significant ways with federally mandated child support program requirements; and

Whereas the 1996 Personal Responsibility and Work Opportunity Act of 1996 provided child support obligees with a new and considerable right to child support arrearages which were previously assigned to the government, and under current law these arrears are treated unfavorably in bankruptcy; and

Whereas in 1999 both houses of Congress passed bankruptcy reform bills, each of which contained child support provisions which would accomplish the following:

a. Give support debts a very high priority in payment from the bankruptcy estate;

b. Eliminate the distinction between support owed to a spouse or parent and support assigned to the government;

c. Insure that support in any form would not be dischargeable in bankruptcy;

d. Allow federally mandated support enforcement procedures such as wage withholding orders, license revocations processes, credit reporting, and medical support enforcement, to be unaffected by automatic bankruptcy stays;

e. Eliminate the conflicts between provisions of the Bankruptcy Code and the Social Security Act which affect the treatment of a support arrearage debt; and

Whereas the California Family Support Council is on record in support of both the House and Senate 1998 bankruptcy reform bills; and

Whereas the support provisions were improved and strengthened in the 1999 House and Senate Bankruptcy Reform bills; and

Whereas the support provisions in the 1999 House and Senate bills contain all improvements for collecting support during bankruptcy as approved by the California Family Support Council; now therefore be it

Resolved that the California Family Support Council:

1. Supports both the House and Senate Bankruptcy Reform Bills as passed by their respective bodies; and

2. Urges the House and Senate to preserve the current child support provisions in conference; and

3. Urges the President to sign the bankruptcy reform legislation if the final conference report maintains the current child support provisions; and

4. Directs the President of the California Family Support Council to convey to the California Congressional Delegation and to the President its enthusiastic endorsement of the Bankruptcy Reform Bills.

Mr. SESSIONS. I thank the Chair and yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. GRASSLEY. Mr. President, I ask unanimous consent to proceed as in morning business with certain administrative wrapup responsibilities.

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

ADDITIONAL STATEMENTS

IN MEMORY OF TODD PORTERFIELD

• Mr. HOLLINGS. Mr. President, It has come to my attention that a young man, Todd Porterfield, was struck by a car and killed over the summer while he was participating in a philanthropy event for Pi Kappa Phi social fraternity, of which I am an alumnus. Todd, a senior at the University of Washington, was on a cross-country bike ride called the Journey of Hope. Each year, the Journey of Hope raises approximately $300,000 for the national organization Push America that supports people with disabilities. Todd's commitment to service was remarkable in someone so young. He not only helped lead philanthropy efforts within his fraternity, but also traveled to Mexico to build homes for the disadvantaged and volunteered for three different shelters and outreach programs for the homeless in Seattle. Todd had a bright future and no doubt would have continued to be an active and caring member of his community. My thoughts are with his friends and family, members of Pi Kappa Phi fraternity and the University of Washington.•

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–11744. A communication from the Special Assistant, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of FM Allotments; FM Broadcast Stations (Elkhart, Texas)'' (MM Docket No. 00–152) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11745. A communication from the Special Assistant, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments; DTV Broadcast Stations, Scottsbluff, NE'' (MM Docket No. 00–140, RM–9916) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11746. A communication from the Special Assistant, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments; FM Broadcast Stations (Eatonville, Wenatchee, Moses Lake, Spokane, and Newport, Washington)'' (MM Docket No. 99–74, RM–9269, RM–9736) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11747. A communication from the Special Assistant, Mass Media Bureau, Federal