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# Senate

*(Legislative day of Friday, September 22, 2000)*

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

## PRAYER

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

Almighty God, Your intervention in trying times in the past has made us experienced optimists for the future. Our confidence is rooted in Your reliability. You are with us; therefore we will not fear. Your commandments give us Your absolutes; therefore we will not waver. You call us to obey You as well as love You; therefore we will not compromise our convictions. You will give us strength and courage for each challenge; therefore we will not be anxious. You have called us to glorify You with our work; therefore we will seek to do everything for thy Son. You have inspired us to be merciful as You are merciful; therefore we will restrain from condemnatory judgments. You have helped our Nation through contentious times of discord and disunity in the past; therefore we ask for Your help in these days as we wait for final resolution of the Presidential election.

Grant the Senators a special empowering of Your Spirit today. You are our Lord and Saviour. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable GEORGE VOINOVICH, a Senator from the State of Ohio, led the Pledge of Allegiance, as follows:

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

## RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

## SCHEDULE

Mr. HAGEL. Mr. President, for the information of all Senators, the Senate will be in a period of morning business until 11 a.m. with Senators HAGEL and DURBIN in control of the time. Following morning business, the Senate will begin postcloture debate on the bankruptcy conference report, with a vote scheduled to occur tomorrow at 4 p.m., or earlier if any of the remaining debate time is yielded back.

It is still hoped that the remaining business of the Congress can be completed this week, and therefore additional votes can be expected. I thank my colleagues for their attention.

Mr. REID. If the Senator will yield, I appreciate very much especially the last phrase of his statement. I believe it is very important for the American public, the people from Nebraska, and the people from Nevada, that we try to complete our work as quickly as possible, without a lot of dissension. There was a tremendous amount of work put into the various appropriations bills—the balanced budget add-on and other things we did prior to leaving here that we almost had completed. I hope we can join together and finish that as quickly as possible and not leave any undone work for the new Congress and President.

I was happy to hear the acting leader indicate that we were going to try to finish the business we have now pending before the Congress. I think it will send a very good message to the American public if we can work together, as I believe we are going to have to do with the next Congress. Thank you.

Mr. HAGEL. I thank the Senator. That is the intent of the leadership. Both leaders are working their way through this, and we are all hopeful that will produce some tangible, productive results. Thank you.

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. L. CHAFEE). Under the previous order, leadership time is reserved.

## ORDER OF PROCEDURE

The PRESIDING OFFICER. Under the previous order, the time until 10:30 a.m. is under the control of the Senator from Nebraska.

## TRIBUTE TO ELEVEN DEPARTING SENATORS

Mr. HAGEL. Mr. President, I rise this morning to reflect on the service of our 11 colleagues who will be completing their Senate service in the next few days. Hugh Sidey, one of the great journalists and political observers of our time, who covered eight Presidents and became well acquainted with those Presidents, once said that ''politics, after all is said and done, is the business of belief and enthusiasm. Hope energizes, doubt destroys. Hopelessness is not our heritage.'' So said Mr. Sidey. Aside from the fact that he has Nebraska roots, which I suspect reflects some element of his good judgment, he is right.

As we reflect on the service of these 11 individuals who will be leaving this institution, the one common denominator that anchored the 11 was commitment to something bigger than themselves: service to this country. The 11 individuals reflect our society, as does this body, from the States they represented, to their backgrounds, to their commitments. That, too, represented what may be this country's greatest strength and that is its diversity.

As TOM DASCHLE mentioned last night at the Supreme Court dinner, in the history of this institution, only 1,853 men and women have ever served

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

here. Now, we will increase that number on January 3. But the 11 colleagues and friends who leave this institution are among those 1,853 individuals who have served and are now serving.

I think it is worthy to bring some note to these 11 individuals. They have been honored and recognized throughout this year, and very appropriately so, individually by many Members of this body, but I wish, in the few minutes I have, to maybe tie some more general themes together about why these 11 men have been so important together to this body.

We begin by asking the question: Who are these 11 bold, different, distinguished citizens?

Well, first, they are from all parts of the country. They are of different religions. They are fathers, husbands, brothers, uncles, and grandfathers. Scattered among these 11, of course, are Republicans and Democrats, maybe liberals, maybe some conservatives, and maybe some moderates.

As we look further, we find the veterans—World War II veterans, Vietnam war veterans. One among them is my friend and colleague from Nebraska, Senator BOB KERREY, who holds the Congressional Medal of Honor.

We have war heroes and veterans among these 11. We have former Governors, former attorneys general, ambassadors, businessmen, journalists, lawyers, and bankers—all representing the fiber of this country, all representing the different universes of this country that tie us together as a nation. Surely among the 11 is one of the preeminent public servants of our time, Senator MOYNIHAN from New York.

At a time when the world peers in the large window of the front room of American politics—in some cases they may be bewildered by what they are seeing in this country, that we can't seem to elect a President—it is even more important that we spend some time reflecting on these 11 individuals because, as we know, this country will produce a President. That President will govern. That President will be effective. And the institution of the U.S. Senate will be very much a part of assisting that President in governing this country, which has immense consequences for the world.

If there is a question about unsteadiness in this country or our institutions, again we need only reference the 11 Senators who will be leaving this body because there was nothing unsteady about these 11 individuals. They were anchored to a Constitution that has been the roadmap for this great country for over 200 years, and that has ensured the liberties, the privileges, and the rights that these 11 individuals fought for, debated over, and made stronger.

These 11 Senators brought unique experience and perspectives. They applied those in their own ways and in their own individual styles, which again has added to the richness of the culture of this institution and reflects the richness and the culture of this country. Every new Senator we bring on and every Senator who leaves has had a part in stitching the fabric—and continues to stitch the fabric—of this country.

At a time when we question the institutional structures, the procedures and the processes, we must not forget that it is the individual that has made this country what it is. De Tocqueville wrote about it in the mid-19th century. When he observed America and wrote at that point the most authoritative document on America, he said the most amazing thing about America was the magic of America. He said it was the individual. It was individual commitment. It was freedom. That was the magic of America.

Arnold Toynbee, who probably wrote the most definitive book on the civilization of mankind as he documented the 21 civilizations of the world, wrote that each civilization begins with a challenge and a response.

Surely, as we reflect on these 11 Senators, each of their lives is a remarkable story. Each has been, as Toynbee wrote in his study of history, a challenge and response. That is what representative government is about. But it cannot function without the individual commitment of people such as these 11 distinguished Americans who leave this body.

Yes, they helped chart a course for this country. And, yes, they helped fulfill the destiny of this country. Yes, they understood exactly what Hugh Sidey said—that hopelessness is not our heritage. They understood that as well as any 11 people in the history of this country.

But they did something equally remarkable in that they inspired others.

I suspect, as you go across those 11 States represented by these 11 Senators, and go into schools and talk to teachers and young men and women who watched PAT MOYNIHAN, BOB KERREY, FRANK LAUTENBERG, and CONNIE MACK, they would have a story. They would have some dynamic to their personal lives that somehow would be tied back to leadership and the inspiration of one of these 11 Senators. In the end, that is our highest obligation in public service. In the end, that is the most important thing we can do.

Not just for the RECORD but because it is important that we hear the list of these names, I would like to read the list of these 11 Senators:

Senator SPENCE ABRAHAM from Michigan;

Senator JOHN ASHCROFT from Missouri;

Senator RICHARD BRYAN from Nevada;

Senator SLADE GORTON from Washington;

Senator ROD GRAMS from Minnesota;

Senator BOB KERREY from Nebraska;

Senator FRANK LAUTENBERG from New Jersey;

Senator CONNIE MACK from Florida;

Senator DANIEL PATRICK MOYNIHAN from New York;

Senator CHUCK ROBB from Virginia;

And Senator BILL ROTH from Delaware.

They have accomplished, each in their own way but, more importantly, together as part of this institution, a remarkable number of things in their careers. Many will go on and do other things. All will stay active. All will stay committed to this country.

What they have done, for which we all are grateful and for which America is grateful, deserves immense recognition; that is, they leave this great institution stronger and better because of their service. Therefore, they leave America stronger and better because of their service.

Mr. President, thank you for allowing me some time to talk about our colleagues whom all of us will miss.

I reserve the remainder of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## ABOLISH THE ELECTORAL COLLEGE

Mr. DURBIN. Mr. President, 5 weeks ago, on November 1, I held a news conference with my colleague from Illinois, Congressman RAY LAHOOD, on the subject of the electoral college. I always preface my remarks on this issue by reminding people that that was before the November 7 election.

In 1993, I had introduced legislation with Congressman GERALD KLECZKA, of Wisconsin, as a Member of the House, to abolish the electoral college. Congressman LAHOOD and I came forward on November 1 of this year and made the same recommendation before the election on November 7. So what I am about to say and what I am about to propose, really, although it is going to take into account what happened in our last election, is motivated by a belief that the underlying mechanism in America for choosing the President of the United States is flawed and should be changed.

On that day, November 1, I came to the floor of the Senate to explain why I thought the Constitution should be amended to replace the electoral college with a system to directly elect our President. One week after the press conference, the American people went to the polls to express their will. It is worth pausing to realize that we are living through an extraordinary election, the closest by far in more than a century. As we await the outcome, it is important to remember that soon our country will have a new President. I am confident that our great Nation

will successfully navigate the difficulties of this historic election. I am concerned, however, at the loss of confidence of the American voters in the system we know as the electoral college.

If we do nothing else over the next year, let's commit to improve and reform the way we elect leaders in America. There are three critical areas of election system reform that I think we should address. The first is campaign financing. I certainly support the McCain-Feingold bipartisan approach to cleaning up the way we pay for campaigns. The second is the mechanisms of the voting process. My colleagues, Senator SCHUMER of New York and Senator BROWNBACK of Kansas, have suggested we put some money on the table for States and localities that want to put in more efficient and more accurate voting machinery. I think that is a good idea. And, of course, the third is changing the electoral college. Today I will discuss replacing that system with a direct popular vote for President.

For those who want to defend the current electoral college system, I want to ask, What are the philosophical underpinnings that lie at its foundation? I submit there are none. Instead, the electoral college was a contrived institution, created to appeal to a majority of the delegates to the Constitutional Convention in 1787, who were divided by the issue of Federal versus State powers, big State versus small State rivalries, the balance of power between branches of Government, and slavery.

James Madison was opposed to any system of electing the President that did not maintain the South's representational formula gained in an earlier compromise that counted three-fifths of the African American population toward their State totals. A direct popular election of the Chief Executive would have diluted the influence of the South and diluted the votes based on the slave population.

Many delegates opposed a direct popular election on the grounds that voters would not have sufficient knowledge of the candidates to make an informed choice. Roger Sherman, delegate from Connecticut, said during the Convention: I stand opposed to the election by the people. The people want for information and are constantly liable to be misled.

Given the slowness of travel and communication of that day, coupled with the low level of literacy, the delegates feared that national candidates would be rare and that favorite sons would dominate the political landscape. James Madison predicted that the House of Representatives would end up choosing the President 19 times out of 20.

Also, this system was created before the era of national political parties. The delegates intended the electoral college to consist of a group of wise men—and they were all men at that time—appointed by the States, who would gather to select a President based primarily on their individual judgments. It was a compromise between election of the President by Congress and election by popular vote. Certainly, it is understandable that a young nation, forged in revolution and experimenting with a new form of government, would choose a less risky method for selecting a President.

Clearly, most of the original reasons for creating the electoral college have long since disappeared, and after 200 years of experience with democracy, the rationale for replacing it with a direct popular vote is clear and compelling.

First, the electoral college is undemocratic and unfair. It distorts the election process, with some votes by design having more weight than others. Imagine for a moment if you were told as follows: We want you to vote for President. We are going to give you one vote in selection of the President, but a neighbor of yours is going to have three votes in selecting the President.

You would say that is not American, that is fundamentally unfair. We live in a nation that is one person—one citizen, one vote.

But that is exactly what the electoral college does. When you look at the States, Wyoming has a population of roughly 480,000 people. In the State of Wyoming, they have three electoral votes. So that means that roughly they have 1 vote for President for every 160,000 people who live in the State of Wyoming—1 vote for President, 160,000 people. My home State of Illinois: 12 million people and specifically 22 electoral votes. That means it takes 550,000 voters in Illinois to vote and cast 1 electoral vote for President. Comparing the voters in Wyoming] to the voters in Illinois, there are three times as many people voting in Illinois to have 1 vote for President as in the State of Wyoming.

On the other hand, the philosophical underpinning of a direct popular election system is so clear and compelling it hardly needs mentioning. We use direct elections to choose Senators, Governors, Congressmen, and mayors, but we do not use it to elect a President. One-person, one-vote, and majority rule are supposedly basic tenets of a democracy.

I am reminded of the debate that surrounded the 17th amendment which provides for the direct election of Senators. It is interesting. When our Founding Fathers wrote the Constitution, they said the people of the United States could choose and fill basically three Federal offices: The U.S. House of Representatives, the U.S. Senate, and the President and Vice President. But only in the case of the U.S. House of Representatives did they allow the American people to directly elect that Federal officer with an election every 24 months.

I suppose their theory at the time was those running for Congress lived closer to the voters, and if the voters made a mistake, in 24 months they could correct it. But when it came to the election of Senators in the original Constitution, those Founding Fathers committed to democracy did not trust democracy. They said: We will let State legislatures choose those who will serve in the Senate. That was the case in America until 1913. With the 17th amendment, we provided for the direct election of Senators. So now we directly elect Senators and Congressmen, but we still cling to this age-old electoral college as an indirect way of electing Presidents of the United States. The single greatest benefit of adopting the 17th amendment and providing for the direct election of Senators was that voters felt more invested in the Senate as an institution and therefore able to have more faith in it.

In my State, in that early debate about the 17th amendment, there was a Senator who was accused of bribing members of the State legislature to be elected to the Senate. There were two different hearings on Capitol Hill. The first exonerated him. The second found evidence that bribery did take place. That was part of the impetus behind this reform movement in the direct election of Senators.

Second, while it appears smaller and more rural States have an advantage in the electoral college, the reality of modern Presidential campaigns is that these States are generally ignored.

One of my colleagues on the floor said: I will fight you, DURBIN, on this idea of abolishing the electoral college. I come from a little State, and if you go to a popular vote to elect a President, Presidential candidates will pay no attention to my little State.

I have news for my colleagues. You did not see Governor Bush or Vice President GORE spending much time campaigning in Rhode Island or Idaho. In fact, 14 States were never visited by either candidate during the campaign, while 38 States received 10 or fewer visits. The more populous contested States with their large electoral prizes, such as Florida, Pennsylvania, Ohio, and Wisconsin, really have the true advantage whether we have a direct election or whether we have it by the electoral college.

Third, the electoral college system totally discounts the votes of those supporting the losing candidate in their State. In the 2000 Presidential race, 36 States were never really in doubt. The average percentage difference of the popular vote between the candidates in those States was more than 20 percent. The current system not only discounts losing votes; it essentially adds the full weight and value of those votes to the candidate those voters oppose.

If you were on the losing side in a State such as Illinois, which went for AL GORE, if you cast your vote for George Bush, your vote is not counted. It is a winner-take-all situation. All 22

electoral votes in the State of Illinois went to AL GORE, as the votes in other States, such as Texas, went exclusively to George Bush.

Fourth, the winner-take-all rules greatly increase the risk that minor third party candidates will determine who is elected President. In the electoral college system, the importance of a small number of votes in a few key States is greatly magnified. In a number of U.S. Presidential elections, third party candidates have affected a few key State races and determined the overall winner.

We can remember that Ross Perot may have cost President Bush his reelection in 1992, and Ralph Nader may have cost AL GORE the 2000 election. In fact, in 1 out of every 4 Presidential elections since 1824, the winner was one State away from becoming the loser based on the electoral college vote count.

This is a chart which basically goes through the U.S. Presidential elections since 1824 and talks about those situations where we had a minority President, which we did with John Adams in 1824, with Rutherford B. Hayes in 1876, and Benjamin Harrison in 1888. These Presidential candidates lost the popular vote but won the election, which is rare in American history. It may happen this time. We do not know the outcome yet as I speak on the floor today.

In so many other times, though, we had very close elections where, in fact, the electoral vote was not close at all. Take the extremely close race in 1960 to which many of us point: John Kennedy, 49.7 percent of the vote; Richard Nixon, 49.5 percent. Look at the electoral college breakdown: 56 percent going to John Kennedy; 40 percent to Richard Nixon. The electoral college did not reflect the feelings of America when it came to that race.

The same thing can be said when we look at the race in 1976. Jimmy Carter won with 50.1 percent of the vote over Gerald Ford with 48 percent of the vote. Jimmy Carter ended up with 55 percent of the electoral college and Gerald Ford with 44 percent. Again, the electoral college did not reflect that reality.

In comparison, under a direct popular vote system where over 100 million votes are cast, third party candidates generally would have a much more difficult time playing the spoiler. For instance, there have only been two elections since 1824 where the popular vote has been close enough to even consider a recount. Those were 1880 and 1960. In today's Presidential elections, a difference of even one-tenth of 1 percent represents 100,000 votes.

Fifth, the electoral college is clearly a more risky system than a direct popular vote, providing ample opportunity for manipulation, mischief, and litigation.

The electoral college provides that the House of Representatives choose the President when no candidate receives a majority of electoral votes. That happened in 1801 and 1825.

The electoral system allows Congress to dispute the legitimacy of electors. This occurred several times just after the Civil War and once in 1969.

In 1836, the Whig Party ran different Presidential candidates in different regions of the country. Their plan was to capitalize on the local popularity of the various candidates and then to pool the Whig electors to vote for a single Whig candidate or to throw the election to Congress.

In this century, electors in seven elections have cast ballots for candidates contrary to their State vote. Presidents have received fewer popular votes than their main opponent in 3 of the 44 elections since 1824.

In the 2000 election, I ask why the intense spotlight on Florida? The answer is simple: That is where the deciding electoral votes are. More disturbing is the fact that anyone following the election knew that Florida was the tightest race of those States with large electoral prizes. Those wishing to manipulate the election had a very clear target.

In contrast, under a direct popular vote system, there is no equivalent pressure point. Any scheme attempting to change several hundred thousand votes necessary to turn even the closest Presidential election is difficult to imagine in a country as vast and populous as the United States. Similarly, as I previously mentioned, recounts will be much more rare under a direct popular vote system given the size of the electorate.

Some people have said to me: DURBIN, if you have a direct popular vote—here we had GORE winning the vote this time by 250,000 votes—wouldn't you have contests all across the Nation to try to make up that difference? Look what happened in Florida. The original Bush margin was about 1,700 votes. It is now down to 500 votes after 4 weeks of recount efforts and efforts in court, not a very substantial change in a State with 6 million votes. So to change 250,000 votes nationwide if we go to a popular vote would, of course, be a daunting challenge.

Throughout American history, there has been an inexorable march toward one citizen, one vote. As the Thirteen Colonies were debating if and how to join a more perfect Union, only a privileged few—those with the right skin color, the right gender, and the right financial status—enjoyed the right to cast votes to select their leaders. The people even gained the right to choose their Senators by popular vote with the ratification of the 17th amendment in 1913.

As one barrier after another has fallen, we are one step away from a system that treats all Americans equally, where a ballot cast for President in Illinois or Utah or Rhode Island has the same weight as one cast in Oregon or Florida. The electoral college is the last barrier preventing us from achieving that goal. As the world's first and greatest democracy, it is time to fully trust the people of America and allow them the right to choose a President.

We would like to say, when this is all over, that the American people have spoken and chosen their President. The fact is that is not the case. With the electoral college, the American people do not make the choice. The choice is made indirectly, by electing electors in each State, on a winner-take-all basis.

I leave you with a quote from Representative George Norris of Nebraska, who said the following during the debate in 1911 in support of the direct election of U.S. Senators. I quote:

> It is upon the citizens that we depend for stability as a government. It is upon the patriotic, common, industrious people of our country that our Government must always lean in time of danger and distress. To this class of people then, we should give the right to control by direct election the selection of our public officials and to permit each citizen who is part of the sinew and backbone of our Government in time of danger to exercise his influence by direct vote in time of peace.

Mr. President, I will be introducing this proposal to abolish the electoral college and to establish the direct election of a President as part of our agenda in the next Congress. I sincerely hope it will be debated and considered. This time is the right time for us to take the time and look at the way we choose the President of the United States. It will not change the outcome of what happened on November 7 in the year 2000. But if history is our guide, I hope we will learn from this past experience and make our election machinery more democratic and more responsive.

Part of my proposal will also include the requirement that anyone to be elected President has to win 40 percent of the popular vote. Failing that, the top two candidates would face a runoff election. I think it is reasonable to suggest that leading this country requires at least the approval of 40 percent of the popular vote. That is why it would be included.

I hope my colleagues in the Senate, even those from the smaller States, will pause and take a look at this proposal.

I hope, before I yield the floor to my colleague from Minnesota, to make one other comment. There is a lot of talk about how this contest is going to end when it comes to this last election and the impact it will have on the Presidency.

I continue to believe that the American people want a strong President. They want a strong leader in the White House. They want our President to succeed. Whoever is finally declared the winner in the November 7, 2000, election, that person, I believe, deserves the support not only of the American people but clearly of Congress, too. We have to rally behind our next President in support of those decisions which really do chart the course for America. I think that force, coupled with the

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 hard-working 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 hard-working 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.*

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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

Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding'' (MM Docket No. 98–204, 96–16, FCC 00–338) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11748. 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 (Grapeland, Texas)'' (MM Docket No. 00–151) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11749. 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 (Dozier, AL)'' (MM Docket No. 00–131, RM–9897) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11750. 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 (Mill Hall, Jersey Shore and Pleasant Gap, Pennsylvania)'' (MM Docket No. 99–312) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11751. 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, Redding, CA'' (MM Docket No. 00–115, RM–9884) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11752. A communication from the Federal Motor Carrier Safety Administration Regulations Officer, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Motor Carrier Identification Report'' (RIN2126–AA57) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11753. A communication from the Federal Motor Carrier Safety Administration Regulations Officer, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Parts and Accessories Necessary for Safe Operation; Manufactured Home Tires'' (RIN2126–AA65) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11754. A communication from the Chief, Office of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Savannah, GA (COTP Savannah 00–098)'' (RIN2115–AA97) (2000–0093) received on November 30, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11755. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Recreational Fishery Closure'' received on December 1, 2000; to the Committee on Commerce, Science, and Transportation.

EC–11756. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Maine Mahogany Quahog Fishery; Commercial Quota Harvested'' (I.D. 110700C) received on December 1, 2000; to the Committee on Commerce, Science, and Transportation.

## ADDITIONAL COSPONSORS

S. 1814

At the request of Mr. SMITH of Oregon, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 1814, a bill to establish a system of registries of temporary agricultural workers to provide for a sufficient supply of such workers and to amend the Immigration and Nationality Act to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers, and for other purposes.

S. 3183

At the request of Ms. LANDRIEU, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Nevada (Mr. BRYAN) were added as cosponsors of S. 3183, a bill to require the Secretary of the Treasury to mint coins in commemoration of the contributions of Dr. Martin Luther King, Jr., to the United States.

S. 3273

At the request of Mr. SCHUMER, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 3273, a bill to require the Federal Election Commission to study voting procedures in Federal elections, award Voting Improvement Grants to States, and for other purposes.

## AMENDMENTS SUBMITTED

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## DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

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### LEAHY AMENDMENT NO. 4359

Mr. GRASSLEY (for Mr. LEAHY) proposed an amendment to the bill (H.R. 4640) to make grants to States for carrying out DNA analyses for use in the Combined DNA Index System of the Federal Bureau of Investigation, to provide for the collection and analysis of DNA samples from certain violent and sexual offenders for use in such system, and for other purposes; as follows:

At the appropriate place, insert the following:

**SEC. . SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES.**

(a) FINDINGS.—Congress finds that—

(1) over the past decade, deoxyribo-nucleic acid testing (referred to in this section as ''DNA testing'') has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

(4) DNA testing was not widely available in cases tried prior to 1994;

(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

(11) only a few States have adopted post-conviction DNA testing procedures;

(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or re-tested using upgraded methods;

(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in the United States;

(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

(16) providing quality representation to defendants facing the loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State's agreement to ensure post-conviction DNA testing in appropriate cases; and

(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants

in capital cases at each stage of those proceedings.

## INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2001

## ALLARD AMENDMENT NO. 4360

Mr. GRASSLEY (for Mr. ALLARD) proposed an amendment to the bill (H.R. 5630) to authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 48, strike lines 4 through 16.

On page 48, line 17, strike ''**502.**'' and insert ''**501.**''

On page 49, line 7, strike ''**503.**'' and insert ''**502.**''

## PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON ACT OF 2000

## HATCH (AND OTHERS) AMENDMENT NO. 4361

Mr. GRASSLEY (for Mr. HATCH (for himself, Mr. SCHUMER, and Mr. THURMOND)) proposed an amendment to the bill (H.R. 4493) to establish grants for drug treatment alternative to prison programs administered by State or local prosecutors; as follows:

Strike all after the enacting clause and insert the following:

### TITLE I—PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON

**SEC. 101. SHORT TITLE.**

This title may be cited as the ''Prosecution Drug Treatment Alternative to Prison Act of 2000''.

**SEC. 102. DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS ADMINISTERED BY STATE OR LOCAL PROSECUTORS.**

(a) PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following new part:

**''PART BB—PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS**

**''SEC. 2801. PILOT PROGRAM AUTHORIZED.**

''(a) IN GENERAL.—The Attorney General may make grants to State or local prosecutors for the purpose of developing, implementing, or expanding drug treatment alternative to prison programs that comply with the requirements of this part.

''(b) USE OF FUNDS.—A State or local prosecutor who receives a grant under this part shall use amounts provided under the grant to develop, implement, or expand the drug treatment alternative to prison program for which the grant was made, which may include payment of the following expenses:

''(1) Salaries, personnel costs, equipment costs, and other costs directly related to the operation of the program, including the enforcement unit.

''(2) Payments to licensed substance abuse treatment providers for providing treatment to offenders participating in the program for which the grant was made, including aftercare supervision, vocational training, education, and job placement.

''(3) Payments to public and nonprofit private entities for providing treatment to offenders participating in the program for which the grant was made.

''(c) FEDERAL SHARE.—The Federal share of a grant under this part shall not exceed 75 percent of the cost of the program.

''(d) SUPPLEMENT AND NOT SUPPLANT.—Grant amounts received under this part shall be used to supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

**''SEC. 2802. PROGRAM REQUIREMENTS.**

''A drug treatment alternative to prison program with respect to which a grant is made under this part shall comply with the following requirements:

''(1) A State or local prosecutor shall administer the program.

''(2) An eligible offender may participate in the program only with the consent of the State or local prosecutor.

''(3) Each eligible offender who participates in the program shall, as an alternative to incarceration, be sentenced to or placed with a long term, drug free residential substance abuse treatment provider that is licensed under State or local law.

''(4) Each eligible offender who participates in the program shall serve a sentence of imprisonment with respect to the underlying crime if that offender does not successfully complete treatment with the residential substance abuse provider.

''(5) Each residential substance abuse provider treating an offender under the program shall—

''(A) make periodic reports of the progress of treatment of that offender to the State or local prosecutor carrying out the program and to the appropriate court in which the defendant was convicted; and

''(B) notify that prosecutor and that court if that offender absconds from the facility of the treatment provider or otherwise violates the terms and conditions of the program.

''(6) The program shall have an enforcement unit comprised of law enforcement officers under the supervision of the State or local prosecutor carrying out the program, the duties of which shall include verifying an offender's addresses and other contacts, and, if necessary, locating, apprehending, and arresting an offender who has absconded from the facility of a residential substance abuse treatment provider or otherwise violated the terms and conditions of the program, and returning such offender to court for sentence on the underlying crime.

**''SEC. 2803. APPLICATIONS.**

''(a) IN GENERAL.—To request a grant under this part, a State or local prosecutor shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

''(b) CERTIFICATIONS.—Each such application shall contain the certification of the State or local prosecutor that the program for which the grant is requested shall meet each of the requirements of this part.

**''SEC. 2804. GEOGRAPHIC DISTRIBUTION.**

''The Attorney General shall ensure that, to the extent practicable, the distribution of grant awards is equitable and includes State or local prosecutors—

''(1) in each State; and

''(2) in rural, suburban, and urban jurisdictions.

**''SEC. 2805. REPORTS AND EVALUATIONS.**

''For each fiscal year, each recipient of a grant under this part during that fiscal year shall submit to the Attorney General a report regarding the effectiveness of activities carried out using that grant. Each report shall include an evaluation in such form and containing such information as the Attorney General may reasonably require. The Attorney General shall specify the dates on which such reports shall be submitted.

**''SEC. 2806. DEFINITIONS.**

''In this part:

''(1) The term 'State or local prosecutor' means any district attorney, State attorney general, county attorney, or corporation counsel who has authority to prosecute criminal offenses under State or local law.

''(2) The term 'eligible offender' means an individual who—

''(A) has been convicted of, or pled guilty to, or admitted guilt with respect to a crime for which a sentence of imprisonment is required and has not completed such sentence;

''(B) has never been convicted of, or pled guilty to, or admitted guilt with respect to, and is not presently charged with, a felony crime of violence, a major drug offense, or a crime that is considered a violent felony under State or local law; and

''(C) has been found by a professional substance abuse screener to be in need of substance abuse treatment because that offender has a history of substance abuse that is a significant contributing factor to that offender's criminal conduct.

''(3) The term 'felony crime of violence' has the meaning given such term in section 924(c)(3) of title 18, United States Code.

''(4) The term 'major drug offense' has the meaning given such term in section 36(a) of title 18, United States Code.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by adding at the end the following new paragraph:

''(24) There are authorized to be appropriated to carry out part BB $10,000,000 for each of fiscal years 2001 through 2003.''.

### TITLE II—FEDERAL DRUG TREATMENT ALTERNATIVE SENTENCING

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''Federal Drug Treatment Alternative Sentencing Act of 2000''.

**SEC. 202. ESTABLISHMENT.**

The court, upon the conviction of an individual for a misdemeanor under section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)), if the individual is a defendant described in section 3553(f)(2) of title 18, United States Code, shall consider sentencing that individual to a term of probation that includes a condition, or a term of imprisonment that includes a recommendation, of participation in substance abuse treatment, including a drug dependency program as described under this title.

**SEC. 203. PROBATION PROGRAMS.**

(a) GENERALLY.—If the court imposes a sentence of probation pursuant to section 202, the sentence of probation shall be subject to subtitle B of chapter 227 of title 18, United States Code. In considering discretionary conditions of probation under section 3563(b) of such title, the court shall consider and use, where appropriate to assure participation in substance abuse treatment, any of the following:

(1) Day fines.
(2) House arrest.
(3) Electronic monitoring.
(4) Intensive probation supervision.
(5) Day reporting centers.
(6) Intermittent confinement.
(7) Treatment in therapeutic community.

(b) ALTERNATIVE SENTENCE.—In order to assure participation in substance abuse treatment each offender who participates in a substance abuse program pursuant to this section shall serve a sentence of imprisonment with respect to the underlying offense

if that offender does not successfully complete such a substance abuse treatment program.

(c) PREFERENCE FOR COMMUNITY-BASED PROGRAMS.—The court shall order, to the greatest extent practicable, that substance abuse treatment for an individual sentenced under subsection (a) shall be provided in the locality in which the individual resides.

**SEC. 204. DRUG DEPENDENCY PROGRAM.**

(a) IN GENERAL.—The Bureau of Prisons (referred to in this title as the ''Bureau'') shall maintain a drug dependency program for offenders sentenced to incarceration under this title. The program shall consist of—

(1) residential substance abuse treatment; and

(2) aftercare services.

(b) REPORT.—The Bureau of Prisons shall transmit to the Congress on January 1, 2002, and on January 1 of each year thereafter, a report. Such report shall contain—

(1) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau; and

(2) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

**SEC. 205. DEFINITIONS.**

In this title—

(1) the term ''residential substance abuse treatment'' means a course of individual and group activities, lasting between 9 and 12 months, in residential treatment programs—

(A) directed at the substance abuse problems of the convicted person;

(B) intended to develop a person's cognitive, behavioral, social, vocational, and other skills so as to solve the convicted person's substance abuse and related problems; and

(C) shall include—

(i) addiction education;

(ii) individual, group, and family counseling pursuant to individualized treatment plans;

(iii) opportunity for involvement in Alcoholics Anonymous, Narcotics Anonymous, or Cocaine Anonymous;

(iv) parenting skills training, domestic violence counseling, and sexual abuse counseling, where appropriate;

(v) HIV education counseling and testing, when requested, and early intervention services for seropositive individuals;

(vi) services that facilitate access to health and social services, where appropriate and to the extent available; and

(vii) planning for and counseling to assist reentry into society, including referrals to appropriate educational, vocational, and other employment-related programs (to the extent available), referrals to appropriate outpatient or other drug or alcohol treatment, counseling, transitional housing, and assistance in obtaining suitable affordable housing and employment upon completion of treatment (and release from prison, if applicable);

(2) the term ''aftercare services'' means a course of individual and group treatment for a minimum of one year or for the remainder of the term of incarceration if less than one year, involving sustained and frequent interaction with individuals who have successfully completed a program of residential substance abuse treatment, and shall include consistent personal interaction between the individual and a primary counselor or case manager, participation in group and individual counseling sessions, social activities targeted toward a recovering substance abuser, and, where appropriate, more intensive intervention; and

(3) the term ''substance abuse or dependency'' means the abuse of or dependency on drugs or alcohol.

**SEC. 206. STUDY OF THE EFFECT OF MANDATORY MINIMUM SENTENCES FOR CONTROLLED SUBSTANCE OFFENSES.**

Not later than 1 year after the date of enactment of this Act, the United States Sentencing Commission shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report regarding mandatory minimum sentences for controlled substance offenses, which shall include an analysis of—

(1) whether such sentences may have a disproportionate impact on ethnic or racial groups;

(2) the effectiveness of such sentences in reducing drug-related crime by violent offenders; and

(3) the frequency and appropriateness of the use of such sentences for nonviolent offenders in contrast with other approaches such as drug treatment programs.

## PRIVILEGE OF FLOOR

Mr. DURBIN. Mr. President, I ask unanimous consent that the privilege of the floor be granted to Joe Conley, a fellow on my staff, for today.

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

## DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4640, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4640) to make grants to States for carrying out DNA analyses for use in the Combined DNA Index System of the Federal Bureau of Investigation, to provide for the collection and analysis of DNA samples from certain violent and sexual offenders for use in such system, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 4359

Mr. GRASSLEY. Mr. President, it is my understanding that Senator LEAHY has an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. LEAHY, proposes an amendment numbered 4359.

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

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

The amendment is as follows:

(Purpose: To express the sense of Congress regarding the obligation of grantee States to ensure access to post-conviction DNA testing and competent counsel in capital cases)

At the appropriate place, insert the following:

**SEC. . SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES.**

(a) FINDINGS.—Congress finds that—

(1) over the past decade, deoxyribo-nucleic acid testing (referred to in this section as ''DNA testing'') has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

(4) DNA testing was not widely available in cases tried prior to 1994;

(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

(11) only a few States have adopted post-conviction DNA testing procedures;

(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in the United States;

(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

(16) providing quality representation to defendants facing the loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State's agreement to ensure post-conviction DNA testing in appropriate cases; and

(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of those proceedings.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 4359) was agreed to.

Mr. DEWINE. Mr. President, I rise today to hail the impending passage of H.R. 4640—the DNA Backlog Elimination Act. This is a House companion bill to S. 903—the Violent Offender DNA Identification Act of 1999—which I introduced with my colleague from Wisconsin, Senator KOHL.

While existing anticrime technology can allow us to solve many violent crimes that occur in our communities, in order for this technology to work, it must be used. I have been a longtime advocate for use of the Combined DNA Indexing System (CODIS), which serves as a national DNA data base to profile convicted offender DNA. In fact, during consideration of the Anti-Terriorism Act of 1996, I proposed a provision under which Federal convicted offenders' DNA would be included in CODIS. Unfortunately, the Department of Justice never implemented this law, though currently all 50 States collect DNA from convicted offenders.

One of the purposes of this legislation is to expressly require the collection of DNA samples from federally convicted felons and military personnel convicted of similar offenses. Collection of convicted offender DNA is crucial to solving many of the crimes occurring in our communities. Statistics show that many of these violent felons will repeat their crimes once they are back in society. Since the Federal Government does not collect DNA from these felons, however, the ability of law enforcement to rapidly identify likely suspects is slowed. Collection of such data is critical.

The case of Mrs. Debbie Smith of Virginia underscores the importance of collection of DNA from convicted offenders. Debbie Smith was at her home in the middle of the day when a masked intruder entered her unlocked back door. Her husband, a police lieutenant, was upstairs sleeping. The stranger blindfolded Mrs. Smith and took her to a wooded area behind her house where he robbed and repeatedly raped her. After warning Mrs. Smith not to tell, the assailant let her go. She told her husband, who reported the incident, then took her to the hospital where evidence was collected for DNA analysis.

Debbie Smith's rape experience was so terrible that she contemplated taking her own life. She continued to live in constant fear until 6½ years later when a State crime laboratory found a CODIS match with an inmate then serving in jail for abduction and robbery. In fact, the offender was jailed on another offense 1 month after raping her. There are thousands of other crimes the DNA database can solve. With CODIS we can grant countless victims, like Mrs. Smith, peace of mind and bring their attackers swiftly to justice.

We need to do everything we can to make sure law enforcement has access to these tools. A major obstacle facing State and local crime laboratories are the backlogs of convicted offender samples. The Federal Bureau of Investigation estimates that there are almost one-half million convicted offender samples in State and local laboratories awaiting analysis. Increasing demand for DNA analysis in active cases, and limited resources, are reducing the ability of State and local crime laboratories to analyze their convicted offender backlogs. While I introduced, and Congress passed, the Crime Identification Technology Act of 1998 to address the long-term needs of crime laboratories, many crime laboratories need immediate assistance to address their short-term backlogs that will help law enforcement solve crime.

H.R. 4640 would provide $170 million over 4 years to help State and local crime laboratories address their convicted offender backlogs. Violent criminals should not be able to evade responsibility simply because a State lacks the resources to analyze their DNA samples, or because a loophole excludes certain Federal offenders from our national database. This legislation will be a huge asset for our local law enforcers in their day-to-day fight against crime.

I thank Representative MCCOLLUM for his efforts.

Mr. LEAHY. Mr. President, over the past decade DNA analysis has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene. Because of its scientific precision, DNA testing can, in some cases, conclusively establish a suspect's guilt or innocence. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value for investigators.

While DNA's power to root out the truth has been a boon to law enforcement, it has also been the salvation of law enforcement's mistakes—those who for one reason or another, are prosecuted and convicted of crimes that they did not commit. In more than 75 cases in the United States and Canada, DNA evidence has led to the exoneration of innocent men and women who were wrongfully convicted. This number includes at least 9 individuals sentenced to death, some of whom came within days of being executed. In more than a dozen cases, moreover, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the real perpetrator.

Clearly, DNA testing is critical to the effective administration of justice in 21st century America.

As DNA testing has moved to the front lines of the war on crime, our Nation's forensic labs have experienced a significant increase in their caseloads, both in number and complexity. In the six years since Congress established the Combined DNA Index System. States have been busy collecting DNA samples from convicted offenders for analysis and indexing. Increased Federal funding for State and local law enforcement programs has resulted in more and better trained police officers who are collecting immense amounts of evidence that can and should be subjected to crime laboratory analysis.

Funding has simply not kept pace with this increasing demand, and State crime laboratories are now seriously bottlenecked. Backlogs have impeded the use of new technologies like DNA testing in solving cases without suspects—and reexamining cases in which there are strong claims of innocence—as laboratories are required to give priority status to those cases in which a suspect is known. In some parts of the country, investigators must wait several months—and sometimes more than a year—to get DNA test results from rape and other violent crime evidence. Solely for lack of funding, critical evidence remains untested while rapists and killers remain at large, victims continue to anguish, and statutes of limitation on prosecution expire.

Let me describe the situation in my home State. The Vermont Forensics Laboratory is currently operating in an old Vermont State Hospital building in Waterbury, Vermont. Though it is proudly one of only two fully-accredited forensics labs in New England, it is trying to do 21st century science in a 1940's building. The lab has very limited space and no central climate control—both essential conditions for precise forensic science. It also has a large storage freezer full of untested DNA evidence from unsolved cases, for which there are no other leads besides the untested evidence. The evidence is not being processed because the lab does not have the space, equipment or manpower.

I commend the scientists and lab personnel at the Vermont Forensics Laboratory for the fine work they do everyday under difficult circumstances. But the people of the State of Vermont deserve better. This is our chance to provide them with the resources they deserve.

Passage of the DNA Analysis Backlog Elimination Act of 2000, H.R. 4640, will give States like Vermont the help they desperately need to reduce the backlog of untested crime scene evidence from unsolved crimes and untested convicted offender samples. It allocates $170 million over the next four years for grants to States to increase the capacity of their forensic laboratories and carry out DNA analyses of backlogged evidence. Senator SCHUMER and

I have pressed for increased appropriations for these purposes. This authorization bill is a step in the right direction.

In addition to the problem of unanalyzed crime scene and convicted offender evidence, there is an urgent need to address the gap in coverage of the national DNA index that has left out Federal, military, and District of Columbia offenders. The inability to include these offenders in the national index has seriously frustrated efforts to solve crimes and prevent further crimes. The bill that the Senate passes today eliminates the gap in coverage by authorizing the Bureau of Prisons and other Federal agencies to collect, analyze, and index DNA samples from individuals who have been convicted of Federal offenses of a violent or sexual nature. The bill also authorizes needed funding for these purposes, which Senator SCHUMER and I have been working to include in this years' appropriations bills.

While I support H.R. 4640, I believe it falls short in one critical respect: It fails to address the urgent need to increase access to DNA testing for prisoners who were convicted before this truth-seeking technology became widely available. Prosecutors and law enforcement officers across the country use DNA testing to prove guilt, and rightly so. By the same token, however, it should be used to do what is equally scientifically reliable to do—prove innocence.

I was greatly heartened earlier this month when the Governor of Virginia finally pardoned Earl Washington, after new DNA tests confirmed what earlier DNA tests had shown: He was the wrong guy. He was the 88th wrong guy discovered on death row since the reinstatement of capital punishment. His case only goes to show that we cannot sit back and assume that prosecutors and courts will do the right thing when it comes to DNA. It took Earl Washington years to convince prosecutors to do the very simple tests that would prove his innocence, and more time still to win a pardon. And he is still in prison today.

States like Virginia continue to stonewall on requests for DNA testing. They continue to hide behind time limits and procedural default rules to deny prisoners the right to present DNA test results in court. They are still destroying the DNA evidence that could set innocent people free. These sorts of practices must stop. We should not pass up the promise of truth and justice for both sides of our adversarial system that DNA evidence offers.

By passing H.R. 4640, we substantially increase funding to increase the capacity of State and local forensic labs to carry out DNA analysis of crime scene evidence and convicted offender samples. That is an appropriate use of Federal funds. But we at least ought to require that this truth-seeking technology be made available to both sides.

I proposed a modest Sense of Congress amendment to H.R. 4640, which the Senate is passing today. It describes how DNA testing can and has resulted in the post-conviction exoneration of scores of innocent men and women, including some under sentence of death, and expresses the sense of Congress that we should condition forensic science-related grants to a State or State forensic facility on the State's agreement to ensure post-conviction DNA testing in appropriate cases. Because post-conviction DNA testing has shown that innocent people are sentenced to death in this country with alarming frequency, and because the most common constitutional error in capital cases is egregiously incompetent defense lawyering, my amendment also calls on Congress to work with the States to improve the quality of legal representation in capital cases through the establishment of counsel standards.

I introduced legislation in this Congress that would have accomplished both of these things. The Innocence Protection Act of 2000 contains meaningful reforms that I believe could save innocent lives. As the 106th Congress winds down, we have 14 cosponsors in the Senate, and about 80 in the House. We have Democratic and Republican cosponsors, supporters of the death penalty and opponents. President Clinton, Vice President GORE, and Attorney General Reno have all expressed support for the bill.

Tragically, real reform of our nation's capital punishment system foundered on the shoals of election-year politics. But with the Sense of Congress provision that we pass today, at least we have agreed on a blueprint for effective reform legislation in the 107th Congress.

The law enforcement issues addressed by H.R. 4640 are important, but as FBI Director Louis Freeh has acknowledged, ''Post-conviction relief is an equally important issue that requires a solution.'' In a recent letter, Director Freeh pledged to work with me on post-conviction relief issues in the next Congress and I look forward to working with the Director.

Each day that DNA evidence goes uncollected and untested, solvable crimes remain unsolved, and people across the country are needlessly victimized. I hope that the House will move quickly to pass H.R. 4640 as amended before it winds up its work for the year.

Mr. KOHL. Mr. President, I rise today in support of H.R. 4640, the DNA Analysis Backlog Elimination Act of 2000, which is the companion bill to my Violent Offender DNA Identification Act of 1999. This bipartisan measure will put more criminals behind bars by correcting practical and legal shortcomings that leave too much crucial DNA evidence unused and too many violent crimes unsolved.

Currently, all 50 states require DNA samples to be obtained from certain convicted offenders, and these samples increasingly can be shared through a national DNA database established by Federal law. This national database—part of the Combined Database Index System (CODIS)—enables law enforcement officials to link DNA evidence found at a crime scene with any suspect whose DNA is already on file. By identifying repeat offenders, this DNA sharing can and does make a difference. Already the FBI reports that almost 1400 investigations have been aided by the DNA database, solving numerous crimes. And in my home state of Wisconsin, experience proves that DNA ''sharing'' pays off. In fact, just a week before the statute of limitations ran out in a multiple rape investigation, DNA matching helped identify a serial rapist responsible for three rapes in Kenosha and a fourth in Racine. As a result, he's currently serving an 80-year sentence. Without DNA databases, suspects like this otherwise might never be discovered—or convicted.

As valuable as this system is, it is not as effective as it could—or should—be. The effectiveness of the database is directly related to the number of DNA profiles it contains. For every 1,000 new profiles, we can expect to find at least one match, and with every new profile added, the odds for a match increase. However, there are currently two major obstacles to the effective functioning of the database. Our measure would correct these problems and make the database far more productive.

First, thousands of DNA samples that have already been collected still must be analyzed before they can be entered into the national database. The FBI estimates that there is a backlog of over 700,000 DNA samples from convicted offenders languishing, unanalyzed, in state crime laboratories for simple lack of funding.

Our measure will reduce the backlog of unanalyzed samples by providing the funding necessary to analyze them and put them ''on-line.'' It provides $45 million over three years to erase the backlog of the 700,000 unanalyzed samples and the almost-as-pressing backlog of approximately 220,000 more samples that need to be reanalyzed using state-of-the-art methods.

Indeed, easing this backlog was the lead recommendation of the National Commission on the Future of DNA Evidence appointed by the Attorney General. As the Commission explained, ''the power of the CODIS program lies in the sheer numbers of convicted offender samples that are processed and entered into the database.''

Second, for some inexplicable reason, we do not collect samples from Federal and D.C. offenders. So while the database can identify a suspect whose DNA is on file in one of the 50 states, it generally won't catch a Federal or D.C. offender. Under current law, that suspect will not be identified; his crime may not be solved; and he could get off scot-free. We thought we already closed this loophole through 1996 legislation which provides that the FBI ''may expand

[the database] to include Federal crimes and crimes committed in the District of Columbia,'' but Federal officials claim more express authority is necessary. We are not so sure they're right, but there is no need to wait any longer.

Our measure closes once and for all this loophole that allows DNA samples from Federal (including military) and Washington, D.C. offenders to go uncollected. Under our proposal, DNA samples would be obtained from any Federal offender—or any D.C. offender under Federal custody or supervision—convicted of a violent crime or other qualifying offense. And it would require the collection of samples from juveniles found delinquent under Federal law for conduct that would constitute a violent crime if committed by an adult. Our proposal was prepared with the assistance of the FBI, the Administrative Office of the U.S. Courts, the Bureau of Prisons, the U.S. Parole Commission, agencies within the District of Columbia responsible for supervision of released felons, and the Department of Defense.

Modern crime-fighting technology like DNA testing and DNA databases make law enforcement much more effective. But in order to take full advantage of these valuable resources, we need this measure to make the database as comprehensive—and as productive—as possible. Violent criminals should not be able to evade arrest simply because a state didn't analyze its DNA samples or because an inexcusable loophole leaves Federal and D.C. offenders out of the DNA database. This measure will ensure that we apprehend violent repeat offenders, regardless of whether they originally violated state, Federal or D.C. law. And, by collecting more DNA evidence and utilizing the best of DNA technology, we also can help exonerate individual suspects whose DNA does not match with particular crime scenes.

Mr. President, this measure will help police use modern technology to solve crimes and prevent repeat offenders from committing new ones. Let me credit Senators DEWINE, HATCH, LEAHY and Congressman MCCOLLUM for their hard work which is finally paying off.

Mr. GRASSLEY. I ask unanimous consent the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4640), as amended, was read the third time and passed.

## ICCVAM AUTHORIZATION ACT OF 2000

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 4281, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4281) to establish, wherever feasible, guidelines, recommendations, and regulations that promote the regulatory acceptance of new or revised scientifically valid toxicological tests that protect human and animal health and the environment while reducing, refining, or replacing animal tests and ensuring human safety and product effectiveness.

There being no objection, the Senate proceeded to consider the bill.

Mr. DEWINE. Mr. President, I rise today to support passage of H.R. 4281, the ''ICCVAM Authorization Act of 2000.'' This bill would make permanent the Interagency Coordinating Committee on the Validation of Alternative Methods, otherwise known as ''ICCVAM.'' Doing so would give companies and federal agencies a sense of certainty and would encourage them to make the long-term research investments necessary to develop new, revised, and alternative toxicology test methods for ICCVAM to review. This would decrease and ultimately could lead to the end of animal use in testing shampoos, pesticides, and other products, while ensuring that human safety and product effectiveness remain protected.

ICCVAM was created pursuant to the 1993 National Institutes of Health Revitalization Act's mandate that the National Institute of Environmental Health Sciences (NIEHS) recommend new processes for federal agencies' acceptance of new, revised, or alternative toxicology test methods. ICCVAM is composed of representatives of various federal agencies that use or regulate the use of animals in toxicity testing.

ICCVAM evaluates and recommends improved test methods and makes it possible for more uniform testing to be adopted across federal agencies. Ultimately, ICCVAM streamlines the test method validation and approval process by evaluating methods of interest to multiple agencies, thus reducing the need for companies to perform multiple animal tests to meet the requirements of different federal agencies. This bill and ICCVAM do not apply to regulations related to medical research.

Recent advances in analytical chemistry and computer modeling have created new opportunities for the development of more accurate, faster, and less expensive test methods—methods that use fewer animals or bypass the need to use any animals in toxicity testing. This is a ''win-win'' situation for the public, industry, animal protection groups, and agencies.

This is a truly bipartisan and cooperative effort among industry, animal protection groups, and various federal agencies. It simply makes sense to make permanent a process that is currently working so well. This bill is supported by the Doris Day Animal League, Procter & Gamble, the Colgate-Palmolive Company, the Humane Society, the American Humane Association, the Massachusetts Society for the Prevention of Cruelty to Animals, the Gillette Company, the Chemical Specialties Manufacturers Association, the American Chemistry Council, the Soap and Detergent Association, the Synthetic Organic Chemical Manufacturers Association, and the American Crop Protection Association.

I thank Senators KENNEDY, MURRAY, SMITH of New Hampshire, ABRAHAM, SANTORUM, and BOXER for their support of ICCVAM and for their work in this bipartisan effort. I also thank Chairman JEFFORDS for his help in moving forward the Senate counterpart bill I introduced—S. 1495—upon which we based our bipartisan negotiations.

### CHEMICAL TESTING PROGRAMS AND CREATING A SCIENTIFIC ADVISORY COMMITTEE

Mrs. BOXER. Mr. President, I appreciate the work of my colleague from Ohio, Mr. DEWINE on S. 1495, the ICCVAM Authorization Act of 2000, and was pleased to cosponsor that legislation. The measure will help ensure that we improve the review of chemical test methods employed by federal agencies with the ultimate goal of reducing the unnecessary use of animals in testing.

The bill we consider here today is the House-passed version, H.R. 4281, which is somewhat different than S. 1495. Would the Senator from Ohio be willing to clarify a few important points about this legislation for our colleagues?

Mr. DEWINE. Mr. President, I would be pleased to clarify aspects of this legislation for my colleagues.

Mr. BAUCUS. I am concerned that this legislation could be used to delay the EPA's chemical testing programs including the proposed Endocrine Disruptor Screening Program, the agency's children's health testing initiatives, and EPA's pesticide registration/re-registration process. Can my colleague from Ohio assure me that nothing in this bill is intended to prevent or slow the implementation of existing statutory mandates under the Food Quality Protection Act and the Safe Drinking Water Act for these important programs?

Mr. DEWINE. I can assure my colleague from Montana that nothing in this legislation is intended to prevent or slow the implementation of existing statutory mandates under the FQPA and SDWA.

In fact, the EPA is currently exercising its discretion to submit test methods to be used in the EDSP to the ICCVAM for assessment of validation. Nothing in this legislation challenges a Federal agency's authority to choose which screens and tests to send to ICCVAM for review, and an agency's decision whether to refer a test to ICCVAM and whether to follow ICCVAM recommendations is within the agency's discretion.

Furthermore, the bill will not have an impact on existing animal tests in existing federal regulatory programs. Its goal is to facilitate the appropriate validation of new, revised and alternative test methods for future use. using the ICCVAM to assess validation of these test methods can streamline

individual assessment by multiple agencies and enhance the scientific validity of these programs, thereby better protecting public health, and ensuring that laboratory animals used in these programs are not used in vain.

Mrs. BOXER. I have one additional question for my colleague from Ohio. The legislation also creates a Scientific Advisory Committee, SAC, to advise ICCVAM, and provides that the SAC should be comprised of at least one representative from industry and one representative of a national animal protection organization.

My understanding of this provision is that it is not exclusive, and that the SAC will also include at least one representative from the environmental community and one member from the public health community as equal voting members. I along with my colleague from Montana view this issue of equal representation as essential to this legislation.

Can we have the commitment of the Senator from Ohio that at least one voting member of the SAC will be from the environmental or public health community?

Mr. DEWINE. The Senator from California is correct that this provision is not meant to be exclusive, and she has my commitment this is the intent of this legislation and that the SAC can be comprised of at least one voting member from the environmental and one voting member from the public health community, in addition to the other members explicitly specified in the legislation.

Mr. GRASSLEY. I ask unanimous consent that the bill be considered read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4281) was read the third time and passed.

## INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2001

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 5630, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5630) to authorize appropriations for fiscal year 2001 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 4360

Mr. GRASSLEY. Mr. President, I understand that Senator ALLARD has an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. ALLARD, proposes an amendment numbered 4360.

The amendment is as follows:

(Purpose: To strike section 501, relating to contracting authority for the National Reconnaissance Office)

On page 48, strike lines 4 through 16.

On page 48, line 17, strike ''502.'' and insert ''501.''.

On page 49, line 7, strike ''503.'' and insert ''502.''.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be agreed to.

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

The amendment (No. 4360) was agreed to.

Mr. SHELBY. Mr. President, I am disappointed, but perhaps not surprised, to be back on the floor with the Intelligence Authorization Act for Fiscal Year 2001.

After 8 years of subordinating national security to political concerns, the Clinton-Gore administration now exits on a similar note. Three days before the election, in the face of hysterical, largely inaccurate, but extremely well-timed media lobbying blitz, the President overruled his national security experts and vetoed this bill over a provision designed to reduce damaging leaks of classified national security information.

Ironically, the White House—with the full knowledge of Chief of Staff John Podesta—had previously signed off on section 304 of the Intelligence bill, the anti ''leaks'' provision that prompted the veto. Section 304, which has been public since May and which represents the product of extensive consultations with the Justice Department and the Senate Judiciary Committee, would have filled gaps in existing law by giving the Justice Department new authority to prosecute all unauthorized disclosures of classified information.

Section 304 and the rest of the intelligence authorization bill were unanimously approved by the Intelligence Committee on April 27, and adopted by the full Senate without dissent on October 2. The President's Executive Office submitted to the Congress a ''Statement of Administration Policy'' in support of the leaks provision. The conference report was adopted by the Senate on October 12.

Let me take a minute to explain why the committee decided, after extensive consultations with the Justice Department, to adopt this provision.

While current law bars unauthorized disclosure of certain categories of information, for example, cryptographic or national defense information, many other sensitive intelligence and diplomatic secrets are not protected. And the U.S. Government, in the words of Director of Central Intelligence George Tenet, ''leaks like a sieve.''

While leakers seldom if ever face consequences for leaks, our intelligence professionals do. These range from the very real risks to the lives and freedom of U.S. intelligence officers and their sources, to the compromise of sensitive and sometimes irreplaceable intelligence collection methods. Human or technical, these sources won't be there to warn of the next terrorist attack, crisis, or war.

If someone who is providing us intelligence on terrorist plans or foreign missile programs asks, ''If I give you this information, can you protect it,'' the honest answer is often ''no.'' So they may rethink, reduce, or even end their cooperation. Leaks also alienate friendly intelligence services and make them think twice before sharing sensitive information, as the National Commission on Terrorism recently concluded.

Some of section 304's opponents downplay the seriousness of leaks compared to traditional espionage. Yet leaks can be even more damaging. Where a spy generally serves one customer, media leaks are available to anyone with 25 cents to buy the Washington Post, or access to an Internet connection.

As important as what this legislation does is what it doesn't do. Media organizations and others have conjured up a parade of dire consequences that would ensue if section 304 had become law. Yet this carefully drafted provision would not have silenced whistle blowers, who would continue to enjoy current statutory protections, including those governing the disclosure of classified information to appropriate congressional oversight committees. Having led the move to enact whistleblower protection for intelligence community employees, I am extremely sensitive to this concern.

It would not have criminalized mistakes: the provision would have applied only in cases where unauthorized disclosures are made both willfully and knowingly. That means that the person both intends and understands the nature of the act. Mistakes could not be prosecuted since they are, by definition, neither willful nor knowing.

It would not have eroded first amendment rights. In particular, section 304 is not an Official Secrets Act, as some critics have alleged. Britain's Official Secrets Act authorizes the prosecution of journalists who publish classified information. Section 304, on the other hand, criminalizes the actions of persons who are charged with protecting classified information, not those who receive or publish it. Even under existing statutes, the Department of Justice rarely seeks to interview or subpoena journalists when investigating leaks. In fact, there has never been a prosecution of a journalist under existing espionage or unauthorized disclosure statutes, despite the fact that some of these current laws criminalize the actions of those who receive classified information without proper authorization.

Critics also cite—correctly—the Government's tendency to overclassify information, especially embarrassing information, the disclosure of which would not damage national security, the standard for classification. But these practices are already prohibited under the current Executive order on classification, E.O. 12958, which not only provides a procedure for government employees to challenge a classification determination they believe to be improper, but encourages them to do so.

The real issue is: who decides what should be classified? With commendable honesty, critic Steven Aftergood of the Federation of American Scientists went beyond ritual denunciation to spell out his real concern: Section 304, as he told the Washington Post, ''turns over to the executive branch the right to determine what will be protected.''

In fact, designated officials within the executive branch have always exercised that authority. What Mr. Aftergood and the media want is to arrogate that authority to themselves and their sources. While designated classification officials may err, they—not disgruntled mid-level employees—are the ones charged under our laws and procedures with balancing the protection of our nation's secrets with the need for government openness.

Mr. President, I am disappointed that President Clinton chose to veto the Intelligence Authorization Act over this provision, and I am especially disappointed at the manner in which this occurred.

I believe, however, that it is in our national interest that the Intelligence Authorization Act for Fiscal Year 2001 be enacted into law. Therefore, the bill before the Senate is identical to the conference report vetoed by the President, but for the ''leaks'' provision.

Mrs. FEINSTEIN. Mr. President, last month the Senate and House approved the conference report to the fiscal year 2001 intelligence authorization bill. Title VIII of the conference report is based on legislation I introduced along with Senators WELLSTONE, GRAMS, BOXER, LEVIN, and HATCH that would create an interagency process to declassify records on activities of the Japanese Imperial Government. Specifically, title VIII is based on the Nazi War Crimes Disclosure Act, a law written by my friend and colleague from Ohio, Senator DEWINE, and our House colleague from new York, Representative CAROLYN MALONEY. This law requires the federal government to search through its records and disclose any classified materials it has on Nazi war crimes, the Nazi Holocaust and the looting of assets and property by the Nazis. Leading what has become the largest declassification of U.S. government records in American history is the Nazi War Criminal Records Interagency Working Group, or IWG, which consists of representatives of key government departments and agencies and three public members appointed by the President. The work done by the IWG and a team of historians and experts at the National Archives has been nothing less than extraordinary. However, the law only gives the IWG just until the end of next year to complete this enormous task. After discussing this with the Senator from Ohio, we agreed that the best course of action was to extend the authorization of the existing IWG until the end of 2003, and give it additional authority to oversee the declassification of Japanese Imperial Government records. In that way, the IWG will be able to undertake an effort to search through U.S. Government records and disclose any classified materials it has on the Japanese Imperial Government similar to the declassification effort underway on Nazi war crimes. In addition, we also thought it was important to ensure that the IWG had a funding authorization to carry out its activities, including the preservation of records that are being declassified. I see the Senator from Ohio on the floor, and I ask if he has anything he wishes to add at this point.

Mr. DEWINE. I thank the Senator from California for her comments. She is correct. The Nazi War Criminal Records IWG has done an outstanding job. It only made sense, given the work the IWG already has done, to explicitly expand its current requirements to cover activities of the Japanese Imperial Government. Mr. President, I see the distinguished chairman of the Senate Select Committee on Intelligence on the floor, and would like to ask the chairman if the provisions of title VIII apply only to the work done by the IWG with respect to the declassification of records exclusively relating to the Japanese Imperial Government?

Mr. SHELBY. The Senator from Ohio is correct. The House and Senate intelligence committees agreed to combine the working groups for both the Nazi and Japanese Imperial Government declassifications in order to obtain economies of scale from both a substantive and financial perspective. However, the requirements set forth in the Japanese Imperial Government Disclosure Act in no way impact on the requirements set forth in the Nazi War Crimes Disclosure Act.

Mr. DEWINE. It is my assessment that title VIII does not change any of the provisions in the Nazi War Crimes Disclosure Act that govern the declassification of records required under that Act, most notably but not limited to Nazi war crimes committed in the European theater of war, including Northern Africa. Therefore, title VIII refers only to activities exclusively of the Japanese Imperial Government and does not attempt to change any procedures relating to the declassification of all records under section 3(a)(1) and (2) of the Nazi War Crimes Disclosure Act.

Mr. SHELBY. I agree with the Senator from Ohio.

Mr. DEWINE. I thank the chairman for this clarification. I understand the Senator from California also would like to clarify several points in title VIII, so I yield to her.

Mrs. FEINSTEIN. I thank the Senator from Ohio and also thank the chairman for taking the time to clarify title VIII. Specifically, would the chairman agree that the records covered in this title are U.S. Government records?

Mr. SHELBY. Yes. Title VIII covers any still-classified U.S. Government records that are related to crimes committee by the Japanese Imperial Government during World War II.

Mrs. FEINSTEIN. As I understand it, the Nazi War Crimes Disclosure Act effectively creates a process of review of records, and then a process to determine which of these records are to be declassified under the criteria provided in the act. The act contains exceptions that could be cited to justify a decision not to declassify. However, these exceptions apply only to decisions relating to declassification, and are not to be used as a reason to not review records for relevancy. As the author of the Nazi War Crimes Disclosure Act, would the Senator of Ohio agree with my interpretation?

Mr. DEWINE. The Senator from California is correct.

Mrs. FEINSTEIN. With that said, some people have raised concerns that the removal of the National Security Act of 1947 exemption in title VIII, which was included in the original legislation, could impede the ability of the IWG in its declassification efforts. It is my understanding, however, that the intent of title VIII, like the Nazi War Crimes Disclosure Act, requires all U.S. Government classified records be reviewed for relevancy, including intelligence records. Is that also the understanding of the chairman of the Select Committee on Intelligence?

Mr. SHELBY. Under title VIII, all still-classified records likely to contain such information should be surveyed to determine if they contain relevant information. If records are found to contain information related to actions by the Japanese Imperial Government during the Second World War, those records would be reviewed for declassification by the IWG under the criteria provided in the title. However, in the interests of safeguarding legitimate national security interests, the Director of Central Intelligence still maintains the discretion to protect the disclosure of operational files under section 701 of the National Security Act of 1947. Given the nature and age of the files it is unlikely he will need to exercise this authority. Title VIII requires an agency head who determines that one of the exceptions for disclosure applies to notify the appropriate congressional committees of a determination that disclosure and release of records would be harmful to a specific interest. It is the intent of title VIII that the IWG will be able to undertake an effort to search through U.S. Government records and disclose classified

materials under statutory guidelines regarding the activities of the Japanese Imperial Government during the Second World War.

Mrs. FEINSTEIN. I thank the distinguished chairman for his clarification of the language contained in the conference report.

Mr. GRASSLEY. Mr. President, I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5630), as amended, was read the third time and passed.

## PRESIDENTIAL THREAT PROTECTION ACT OF 2000

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House to accompany H.R. 3048, to amend section 879 of title 18, United States Code, to provide clearer coverage over threats against former Presidents and members of their families, and for other purposes.

There being no objection, the Presiding Officer laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendments of the Senate numbered 1 and 3 to the bill (H.R. 3048) entitled ''An Act to amend section 879 of title 18, United States Code, to provide clearer coverage over threats against former Presidents and members of their families, and for other purposes.''

*Resolved*, That the House disagree to the amendments of the Senate numbered 2 and 4 to the aforesaid bill.

*Resolved*, That the House agree to the amendment of the Senate numbered 5 to the aforesaid bill, with the following:

In lieu of the matter inserted by the Senate amendment numbered 5, insert the following:

***SEC. 6. FUGITIVE APPREHENSION TASK FORCES.***

*(a) IN GENERAL.—The Attorney General shall, upon consultation with appropriate Department of Justice and Department of the Treasury law enforcement components, establish permanent Fugitive Apprehension Task Forces consisting of Federal, State, and local law enforcement authorities in designated regions of the United States, to be directed and coordinated by the United States Marshals Service, for the purpose of locating and apprehending fugitives.*

*(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for the United States Marshals Service to carry out the provisions of this section $30,000,000 for the fiscal year 2001, $5,000,000 for fiscal year 2002, and $5,000,000 for fiscal year 2003.*

*(c) OTHER EXISTING APPLICABLE LAW.—Nothing in this section shall be construed to limit any existing authority under any other provision of Federal or State law for law enforcement agencies to locate or apprehend fugitives through task forces or any other means.*

***SEC. 7. STUDY AND REPORTS ON ADMINISTRATIVE SUBPOENAS.***

*(a) STUDY ON USE OF ADMINISTRATIVE SUBPOENAS.—Not later than December 31, 2001, the Attorney General, in consultation with the Secretary of the Treasury, shall complete a study on the use of administrative subpoena power by executive branch agencies or entities and shall report the findings to the Committees on the Judiciary of the Senate and the House of Representatives. Such report shall include—*

*(1) a description of the sources of administrative subpoena power and the scope of such subpoena power within executive branch agencies;*

*(2) a description of applicable subpoena enforcement mechanisms;*

*(3) a description of any notification provisions and any other provisions relating to safeguarding privacy interests;*

*(4) a description of the standards governing the issuance of administrative subpoenas; and*

*(5) recommendations from the Attorney General regarding necessary steps to ensure that administrative subpoena power is used and enforced consistently and fairly by executive branch agencies.*

*(b) REPORT ON FREQUENCY OF USE OF ADMINISTRATIVE SUBPOENAS.—*

*(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall report in January of each year to the Committees on the Judiciary of the Senate and the House of Representatives on the number of administrative subpoenas issued by them under this section and the identity of the agency or component of the Department of Justice or the Department of the Treasury issuing the subpoena and imposing the charges.*

*(2) EXPIRATION.—The reporting requirement of this subsection shall terminate in 3 years after the date of enactment of this section.*

Mr. THURMOND. Mr. President, I am pleased that today the Senate is considering H.R. 3048, the Presidential Threat Protection Act. This is important legislation that will benefit both the Secret Service and the Marshals Service, and I hope it becomes law without further delay.

I have fought this entire year to pass legislation that will help the Marshals Service place an increased focus on fighting dangerous fugitives. It has been estimated that 50 percent of the crime in America is caused by 5 percent of the offenders. It is these hardcore, repeat criminals, many of whom are fugitives, that law enforcement must address today. As we discussed at a hearing that I chaired earlier this year before the Judiciary Criminal Justice Oversight Subcommittee on this matter, the number of dangerous fugitives is rising, even as crime rates continue to decline. There are over 525,000 felony or other serious Federal and State fugitives listed in the database of the National Crime Information Center. This number has doubled just since 1987.

The act we are considering today helps make these criminals a top priority by requiring the Attorney General to establish permanent fugitive apprehension task forces to be run by the Marshals Service. The task forces will be a combined effort of Federal and State law enforcement agencies, each bringing their own expertise to this critical task.

These task forces will operate across district lines in the areas of the country where the problem is most acute. They will be operated by the Marshals Service as a national effort, rather than through particular districts, so that other activities cannot interfere in these efforts to apprehend fugitives. Also, the task forces should not duplicate existing fugitive work of the Marshals Service or other Federal and State law enforcement agencies. Moreover, as was discussed during our hearing on this matter, they should work closely with other government agencies. Everyone who is involved in or can contribute to fugitive apprehension must work together to make these specialized fugitive initiatives efficient and effective.

H.R. 3048 provides important, limited administrative subpoena authority for the Secret Service to track down those who threaten the President. I worked hard this year to try to create similar administrative subpoena authority for the Department of Justice to better enable the Marshals Service and others to locate fugitives.

In the Senate, we passed S. 2516, the Fugitive Apprehension Act, which I sponsored, as a free-standing bill to accomplish this task. Later, in the Senate, we also passed a more limited version of S. 2516 as part of H.R. 3048. I thought it was most appropriate that we expand administrative subpoena authority as part of one combined bill.

Unfortunately, the House did not include the administrative subpoena authority for fugitives when passing H.R. 3048 again last week. Some claims were made about the fugitive subpoena authority late in the session that were misinformed or incorrect. We worked closely with our counterparts in the House and tried very hard to alleviate any legitimate concerns by narrowing the scope of the bill and creating even more checks on its use. However, we were not fully able to reach a consensus on this provision this year. We must continue our efforts in the next Congress.

Subpoena authority has existed for years to help authorities investigate drug offenses, child abuse, and even health care fraud. After H.R. 3048 passes, the authority will also exist regarding certain threats against the President. As law enforcement continues to use the subpoena authority in these areas in a responsible, targeted manner, I hope those who have concerns about subpoena authority will come to realize that it is a critical law enforcement tool in certain circumstances. This should be especially clear when law enforcement must track down dangerous fugitives who have warrants out for their arrest and are evading justice.

In closing, I am pleased that this year we have made progress in helping law enforcement address dangerous fugitives. The task forces are one part of this vital larger bill that will benefit Federal law enforcement in their tireless efforts to fight crime.

Mr. LEAHY. Mr. President, The Presidential Threat Protection Act, H.R. 3048, is a high priority for the Secret Service and the Service's respected Director, Brian Stafford, and I am pleased that this legislation is passing the Senate today, along with legislation that Senators THURMOND, HATCH

and I have crafted to establish task forces, under the direction of the U.S. Marshals Service, to apprehend fugitives.

H.R. 3048 would expand or clarify the Secret Service's authority in four ways. First, the bill would amend current law to make clear it is a federal crime, which the Secret Service is authorized to investigate, to threaten any current or former President or their immediate family, even if the person is not currently receiving Secret Service protection and including those people who have declined continued protection, such as former Presidents, or have not yet received protection, such as major Presidential and Vice-Presidential candidates and their families.

Second, the bill would incorporate in statute certain authority, which is currently embodied in a classified Executive Order, PDD 62, clarifying that the Secret Service is authorized to coordinate, design, and implement security operations for events deemed of national importance by the President ''or the President's designee.''

Third, the bill would establish a ''National Threat Assessment Center'' within the Secret Service to provide training to State, local and other Federal law enforcement agencies on threat assessments and public safety responsibilities.

Finally, the bill authorizes the Secretary of the Treasury to issue administrative subpoenas for investigations of ''imminent'' threats made against an individual whom the Service is authorized to protect. The Secret Service has requested that the Congress grant this administrative subpoena authority to expedite investigation procedures particularly in situations where an individual has made threats against the President and is en route to exercise those threats.

''Administrative subpoena'' is the term generally used to refer to a demand for documents or testimony by an investigative entity or regulatory agency that is empowered to issue the subpoena independently and without the approval of any grand jury, court or other judicial entity. I am generally skeptical of administrative subpoena power. Administrative subpoenas avoid the strict grand jury secrecy rules and the documents provided in response to such subpoenas are, therefore, subject to broader dissemination. Moreover, since investigative agents usually issue such subpoenas directly, without review by a judicial officer or even a prosecutor, fewer ''checks'' are in place to ensure the subpoena is issued with good cause and not merely as a fishing expedition.

Current law already provides for administrative subpoena authority in certain types of cases. Specifically, the FBI has been granted authority granted to issue administrative subpoenas to obtain information that may be relevant in investigations of child abuse, child sexual exploitation, or Federal health care offenses. See 18 U.S.C. §§ 3486 and 3486A. In child abuse and child exploitation cases, the FBI is authorized to use an administrative subpoena to require an Internet Service Provider to disclose the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, length of service of a subscriber to or customer of the service and the types of services used by the subscriber or customer. 18 U.S.C. § 3486A(a)(1)(A). Pursuant to those provisions in current law, the Attorney General is authorized to compel compliance with the administrative subpoena in federal court and any failure to obey is punishable as contempt of the court. Current law also provides blanket immunity from civil liability to any person who complies with the administrative subpoena and produces documents, without disclosing that production to the customer to whom the documents pertain.

I have over the years resisted persistent law enforcement requests for additional administrative subpoena authority. The House bill grants the request of the Secret Service for new, limited administrative subpoena authority and simultaneously imposes the following new procedural safeguards on both the FBI's current administrative subpoena authority and the Secret Service's new authority:

The new administrative subpoena authority in threat cases may only be exercised by the Secretary of the Treasury upon determination of the Director of the Secret Service that the threat is ''imminent,'' and the Secret Service must notify the Attorney General of the issuance of each subpoena. I should note that these requirements will help ensure that administrative subpoenas will be used in only the most significant Secret Service investigations. In most cases, for which the threshold showing of ''imminent'' threat cannot be established, the Secret Service will not be authorized to use administrative subpoenas and will instead simply go to the local U.S. Attorney's office to get a grand jury subpoena, as is current practice and law.

The bill would allow a person who receives an administrative subpoena to contest the subpoena in court by petitioning a federal judge to modify or set aside the subpoena and any order of nondisclosure of the production.

The bill would authorize a court to order nondisclosure of the administrative subpoena to for up to 90 days (and up to a 90 day extension) upon a showing that disclosure would adversely affect the investigation in enumerated ways.

Upon written demand, the agency must return the subpoenaed records or things if no case or proceedings arise from the production of records ''within a reasonable time.''

The administrative subpoena may not require production in less than 24 hours after service so agencies may have to wait for at least a day before demanding production.

As originally passed by the House of Representatives, H.R. 3048 provided that violation of the administrative subpoena is punishable by fine or up to five years' imprisonment. The Senate eliminated this provision in an amendment that passed the Senate on October 13, 2000 and I am glad to see that the House has approved that Senate amendment in the version of this bill returned by the House and considered by the Senate today. This penalty provision in the House version of the bill was both unnecessary and excessive since current law already provides that failure to comply with the subpoena may be punished as a contempt of court—which is either civil or criminal. See 18 U.S.C. § 3486(c). Under current law, the general term of imprisonment for some forms of criminal contempt is up to six months. See, e.g., 18 U.S.C. § 402.

The House has approved the part of the Hatch-Leahy-Thurmond amendment to H.R. 3048 requiring the Attorney General to report for the next three years to the Judiciary Committees of both the House and Senate on the following information about the use of administrative subpoenas, including information on the number of such subpoenas issued and by which agency. In this way, the Congress will be able to monitor the use by federal law enforcement officials within the Justice and Treasury Departments of administrative subpoenas.

Finally, the House has approved the part of the Hatch-Leahy-Thurmond amendment to H.R. 3048 requiring the Attorney General to provide a report on the use of administrative subpoenas by executive branch agencies. I am not aware of any recent effort to compile an overview or inventory of the current administrative subpoena powers in the Federal government, but understand that the United States Code contains more then 700 references to subpoena powers, many subject to various forms of administrative delegation. In addition, there are various commissions and other independent and quasi-judicial components of the federal government, which are also vested with subpoena powers not requiring grand jury or federal court involvement. In short, a variety of administrative subpoena authorities exist in multiple forms in multiple agencies, without uniform rules on scope, enforcement, or other due process safeguards. It is time for the Congress to review this situation, and this report by the Attorney General will be a good start.

On the fugitive apprehension task forces, the House has approved in the version of H.R. 3048, which the Senate considers today, parts of the Thurmond-Biden-Leahy amendment that passed the Senate on October 13, 2000.

As a former prosecutor, I am well aware that fugitives from justice are an important problem and that their capture is an essential function of law enforcement. According to the FBI, nearly 550,000 people are currently fugitives from justice on federal, state, and

local felony charges combined. This means that there are almost as many fugitive felons as there are citizens residing in my home state of Vermont.

The fact that we have more than one half million fugitives from justice, a significant portion of whom are convicted felons in violation of probation or parole, who have been able to flaunt court order and avoid arrest, breeds disrespect for our laws and poses undeniable risks to the safety of our citizens.

Our Federal law enforcement agencies should be commended for the job they have been doing to date on capturing Federal fugitives and helping the States and local communities bring their fugitives to justice. The U.S. Marshals Service, our oldest law enforcement agency, has arrested over 120,000 Federal, State and local fugitives in the past four years, including more Federal fugitives than all the other Federal agencies combined. In prior years, the Marshals Service spearheaded special fugitive apprehension task forces, called FIST Operations, that targeted fugitives in particular areas and was singularly successful in arresting over 34,000 fugitive felons.

Similarly, the FBI has established twenty-four Safe Streets Task Forces exclusively focused on apprehending fugitives in cities around the country. Over the period of 1995 to 1999, the FBI's efforts have resulted in the arrest of a total of 65,359 state fugitives. Nevertheless, the number of outstanding fugitives is too large.

The House has approved in the version of H.R. 3048, which the Senate considers today the Hatch-Leahy-Thurmond amendment authorizing the Attorney General to establish fugitive task forces. This amendment would authorize $40,000,000 over 3 years for the Attorney General to establish multiagency task forces, which will be coordinated by the Director of the Marshals Service, in consultation with the Secretary of the Treasury and the States, so that the Secret Service, BATF, the FBI and the States are able to participate in the Task Forces to find their fugitives.

The Hatch-Leahy-Thurmond amendment to H.R. 3048 will help law enforcement with increased resources for regional fugitive apprehension task forces to bring to justice both federal and state fugitives who, by their conduct, have demonstrated a lack of respect for our nation's criminal justice system.

Regarding the Secret Service protective function privilege, while passage of this legislation will assist the Secret Service in fulfilling its critical mission, this Congress is unfortunately coming to a close without addressing another significant challenge to the Secret Service's ability to fulfill its vital mission of protecting the life and safety of the President and other important persons. I refer to the misguided and unfortunately successful litigation of Special Counsel Kenneth Starr to compel Secret Service agents to answer questions about what they may have observed or overheard while protecting the life of the President.

As a result of Mr. Starr's zealous efforts, the courts refused to recognize a protective function privilege and required that at least seven Secret Service officers appear before a federal grand jury to respond to questions regarding President Clinton, and others. In re Grand Jury Proceedings, 1998 W.L. 272884 (May 22, 1998 D.C.), affirmed 1998 WL 370584 (July 7, 1998 D.C. Cir)(per curiam). These recent court decisions, which refused to recognize a protective function privilege, could have a devastating impact upon the Secret Service's ability to provide effective protection. The Special Counsel and the courts ignored the voices of experience—former Presidents, Secret Service Directors, and others—who warned of the potentially deadly consequences. The courts disregarded the lessons of history. We cannot afford to be so cavalier; the stakes are just too high.

In order to address this problem, I introduced the Secret Service Protective Privilege Act, S. 1360, on July 13, 1999, to establish a Secret Service protective function privilege so Secret Service agents will not be put in the position of revealing private information about protected officials as Special Prosecutor Kenneth Starr compelled the Secret Service to do with respect to President Clinton. Unfortunately, the Senate Judiciary Committee took no action on this legislation in this Congress.

Few national interests are more compelling than protecting the life of the President of the United States. The Supreme Court has said that the Nation has ''an overwhelming interest in protecting the safety of its Chief Executive and in allowing him to perform his duties without interference from threats of physical violence.'' *Watts* v. *United States*, 394 U.S. 705, 707 (1969). What is at stake is not merely the safety of one person: it is the ability of the Executive Branch to function in an effective and orderly fashion, and the capacity of the United States to respond to threats and crises. Think of the shock waves that rocked the world in November 1963 when President Kennedy was assassinated. The assassination of a President has international repercussions and threatens the security and future of the entire Nation.

The threat to our national security and to our democracy extends beyond the life of the President to those in direct line of the Office of the President—the Vice President, the President-elect, and the Vice President elect. By Act of Congress, these officials are required to accept the protection of the Secret Service—they may not turn it down. This statutory mandate reflects the critical importance that Congress has attached to the physical safety of these officials.

Congress has also charged the Secret Service with responsibility for protecting visiting heads of foreign states and foreign governments. The assassination of a foreign head of state on American soil could be catastrophic from a foreign relations standpoint and could seriously threaten national security.

The bill I introduced, S. 1360, would enhance the Secret Service's ability to protect these officials, and the nation, from the risk of assassination. It would do this by facilitating the relationship of trust between these officials and their Secret Service protectors that is essential to the Secret Service's protective strategy. Agents and officers surround the protectee with an all-encompassing zone of protection on a 24-hour-a-day basis. In the face of danger, they will shield the protectee's body with their own bodies and move him to a secure location.

That is how the Secret Service averted a national tragedy on March 30, 1981, when John Hinckley attempted to assassinate President Reagan. Within seconds of the first shot being fired, Secret Service personnel had shielded the President's body and maneuvered him into the waiting limousine. One agent in particular, Agent Tim McCarthy, positioned his body to intercept a bullet intended for the President. If Agent McCarthy had been even a few feet farther from the President, history might have gone very differently.

For the Secret Service to maintain this sort of close, unremitting proximity to the President and other protectees, it must have their complete, unhesitating trust and confidence. Secret Service personnel must be able to remain at the President's side even during confidential and sensitive conversations, when they may overhear military secrets, diplomatic exchanges, and family and private matters. If our Presidents do not have complete trust in the Secret Service personnel who protect them, they could try to push away the Secret Service's ''protective envelope'' or undermine it to the point where it could no longer be fully effective.

This is more than a theoretical possibility. Consider what former President Bush wrote in April, 1998, after hearing of the independent counsel's efforts to compel Secret Service testimony:

> The bottom line is I hope that [Secret Service] agents will be exempted from testifying before the Grand Jury. What's at stake here it the protection of the life of the President and his family and the confidence and trust that a President must have in the [Secret Service]. If a President feels that Secret Service agents can be called to testify about what they might have seen or heard then it is likely that the President will be uncomfortable having the agents near by. I allowed the agents to have proximity first because they had my full confidence and secondly because I knew them to be totally discreet and honorable. . . . I can assure you that had I felt they would be compelled to testify as to what they had seen or heard, no matter what the subject, I would not have felt comfortable having them close in. . . . I feel very

strongly that the [Secret Service] agents should not be made to appear in court to discuss that which they might or might not have seen or heard. What's at stake here is the confidence of the President in the discretion of the [Secret Service]. If that confidence evaporates the agents, denied proximity, cannot properly protect the President.

As President Bush's letter makes plain, requiring Secret Service agents to betray the confidence of the people whose lives they protect could seriously jeopardize the ability of the Service to perform its crucial national security function.

The possibility that Secret Service personnel might be compelled to testify about their protectees could have a particularly devastating affect on the Service's ability to protect foreign dignitaries. The mere fact that this issue has surfaced is likely to make foreign governments less willing to accommodate Secret Service both with respect to the protection of the President and Vice President on foreign trips, and the protection of foreign heads of state traveling in the United States.

The security of our chief executive officers and visiting foreign heads of state should be a matter that transcends all partisan politics and I regret that this legislation does not do more to help the Secret Service by providing a protective function privilege.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate recede from its amendments numbered 2 and 4 and agree to the House amendment to the Senate amendment numbered 5.

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

## CHIMPANZEE HEALTH IMPROVEMENT, MAINTENANCE, AND PROTECTION ACT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 3514 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3514) to amend the Public Health Service Act to provide for a system of sanctuaries for chimpanzees that have been designated as being no longer needed in research conducted or supported by the Public Health Service, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. Mr. President, I take this opportunity to clarify some issues related to the Chimpanzee Health Improvement, Maintenance and Protection Act by entering into a colloquy with my colleague from New Hampshire, Senator BOB SMITH. Senator SMITH, as my fellow prime sponsor of the Senate version of this legislation, S. 2725, I would first like to address the House amendment to the bill, which would allow for the possibility of temporarily removing certain chimpanzees from a sanctuary for medical research? Is it your understanding that the purpose of the CHIMP Act is still to provide a permanent lifetime sanctuary for chimpanzees who have been designated as no longer useful or needed in scientific research?

Mr. SMITH of New Hampshire. My colleague from Illinois is correct. The bill calls on the scientists themselves to make the determination that a chimpanzee is no longer useful for research and to formally release the chimpanzee to the sanctuary system for permanent cessation of scientific experimentation.

The amended version of the legislation allows one exception: In that rare, unforeseen circumstance, where a specific sanctuary chimpanzee may be required because a research protocol he endured in the past, combined with a technological advance that was not available or invented at the time he was released, could provide extremely useful information essential to address an important public health need, then that chimpanzee may be used in research if, and only if, the proposed research involves minimal pain and distress to the chimpanzee, as well as to other chimps in the social group, as evaluated by the board of the sanctuary. Of course, if a chimpanzee currently in a lab setting meets the same criteria, then the bill requires that the sanctuary chimpanzee not be used.

Mr. DURBIN. The amended version also requires that the research can only be sought by an applicant who has not previously violated the Animal Welfare Act, does it not? And it requires that if a chimpanzee is ever to be removed from a sanctuary for research, the chimpanzee must be returned to the sanctuary immediately afterward and all expenses associated with the departure, such as travel and ongoing care, must be borne by the research applicant. The chimpanzee should spend as little time away from the sanctuary as possible.

Additionally, before any proposed research use can be approved, the Secretary of Health and Human Services must publish in the Federal Register the Secretary's findings on each of these criteria, including the board's evaluation regarding pain and distress, and seek public comment for at least 60 days.

Mr. SMITH of New Hampshire. The Senator is correct on each of those points, which will serve to further limit the possibility of sanctuary chimpanzees being recalled for research. It is my intention, and the intent of the amended legislation, that any such research would rarely, if ever, take place.

Mr. DURBIN. I agree with my colleague from New Hampshire that the research exception is intended only to be exercised, if at all, under truly extraordinary and rare circumstances. There have also been concerns expressed by some that the CHIMP Act is too expensive. I think it would be helpful for us to address those concerns for the record.

Mr. SMITH of New Hampshire. I agree, it would be good to set the record straight on this issue. The federal government now spends millions of dollars each year for the maintenance and care of chimpanzees who are no longer used in medical research, but are being warehoused in expensive taxpayer-funded laboratory cages. The CHIMP Act will actually save taxpayers money because the sanctuary setting is so much less expensive to build and operate than laboratory facilities.

The Congressional Budget Office prepared a cost estimate for S. 2725, the legislation that you and I introduced in June. H.R. 3514, the House counterpart that is now pending in the Senate, is identical to S. 2725 in terms of the cost issues. The CBO concluded that ''the cost of caring for a chimpanzee in an external sanctuary would be less expensive on a per capita basis than if the government continued to house the animals in federally owned and operated facilities. Therefore, the government would realize a savings in the care and maintenance of the chimpanzees after 2002.'' CBO estimated the annual savings after initial sanctuary construction costs to be an average of $4 million per year after 2002.

It costs $8–$15 per day per animal to care for chimpanzees in a sanctuary, where they live in groups in a naturalized setting. That is compared to the $20–$30 per day per animal that the federal government is now spending to maintain the chimpanzees in laboratory cages.

Even in terms of sanctuary start-up costs, taxpayers will benefit because sanctuaries are two to three times less costly to build than laboratory facilities for chimpanzees. While the federal government is now squandering very high-priced laboratory space warehousing surplus chimpanzees, the CHIMP Act will allow this space to be utilized for animals in research, reducing the need to fund new laboratory construction.

Mr. DURBIN. In addition, the CHIMP Act caps overall multi-year federal expenditures related to building and operating the sanctuary system at $30 million, compared to the $7 million spent now each year by the federal government for the care of chimpanzees in laboratories, as estimated by the CBO.

And this legislation creates a public-private partnership, to generate non-federal dollars that will help pay for the care of these chimpanzees. Right now, their care is financed strictly through taxpayer dollars. Under the bill, the private sector will cover 10 percent of the start-up costs and 25 percent of the operating costs of the sanctuary system.

Mr. SMITH of New Hampshire. I thank my colleague from Illinois for raising those points. I'd also like to address one other issue that may be on the minds of some of our colleagues. That is the question of euthanasia. Fiscal conservatives may question why we

should worry at all about the long-term care of chimpanzees no longer used in medical research. The answer is: it's basically a cost of doing business. If the federal government wants to keep using chimpanzees for medical research, it has to assume the responsibility for their care after the research is done. This isn't just my opinion, as someone who cares about animals. It was the conclusion of the National Research Council, an esteemed body under the National Academy of Sciences, which was asked by NIH to investigate the problem of chimpanzees no longer used for biomedical research.

The NRC conducted a thorough three-year study and issued a report in 1997—Chimpanzees in Research: Strategies for Their Ethical Care, Management, and Use—which recommended sanctuaries as an ''integral component of the strategic plan to achieve the best and most cost-effective solutions to the current dilemma.'' The NRC report clearly rejects the option of euthanizing surplus chimpanzees, based on views strongly conveyed to the NRC by members of the scientific community as well as the public. ''Many members of the public and the scientific community have called for continuing support for chimpanzees in an acceptable environment, rather than euthanizing them, even when they are no longer wanted for breeding or research. The committee fully recognizes the financial implication of this position in regard to lifetime funding for all animals and for additional space and facilities for an aging population.'' The report cites the close similarities between chimpanzees and humans, noting that ''[t]here are practical as well as theoretical reasons to reject euthanasia as a general policy. Some of the best and most caring members of the support staff, such as veterinarians and technicians would, for personal and emotional reasons, find it impossible to function effectively in an atmosphere in which euthanasia is a general policy, and might resign. A facility that adopted such a policy could expect to lose some of its best employees.'' In other words, because chimpanzees and humans are so similar, those who work directly in chimpanzee research would find it untenable to continue using these animals if they were to be killed at the conclusion of the research.

Mr. DURBIN. Therefore, if the Federal government is to keep using chimpanzees to advance human health research goals, long-term care of the animals is a pre-requisite. This legislation will help ensure that the Federal government fulfills that responsibility in a more cost-effective and humane way than is currently done. I thank Senator SMITH for the opportunity to work together to enact this fiscally sound legislation that will better serve the taxpayers as well as the animals.

Mr. SMITH of New Hampshire. I thank Senator DURBIN and the rest of our colleagues for helping to get this legislation enacted before Congress adjourns. It is time to improve the lot of these animals and do right by taxpayers at the same time.

Mr. ENZI. Mr. President, I would like to ask the prime sponsor of the CHIMP Act if it is his intention that the federal share of funding for establishing and operating the national chimpanzee sanctuary system is to come out of NIH's budget?

Mr. SMITH of New Hampshire. Yes, it is my intention and the intent of the legislation that these funds will be drawn from the budget for the National Institutes of Health.

Mr. ENZI. So this legislation will not require additional funding over and above the NIH's annual appropriation?

Mr. SMITH of New Hampshire. That is correct.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3514) was read the third time and passed.

## PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON ACT OF 2000

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 4493 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4493) to establish grants for drug treatment alternatives to prison programs administered by State or local prosecutors.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 4361

Mr. GRASSLEY. Mr. President, it is my understanding that Senator HATCH has a substitute amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. HATCH, proposes an amendment numbered 4361.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. GRASSLEY. Mr. President, I ask unanimous consent the amendment be agreed to.

The amendment (No. 4361) was agreed to.

Mr. GRASSLEY. Mr. President, I ask unanimous consent the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4493), as amended, was read the third time and passed.

## ENHANCED FEDERAL SECURITY ACT OF 2000

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4827 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4827) to amend title 18 United States Code, to prevent the entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport, to prevent the misuse of genuine and counterfeit police badges by those seeking to commit a crime, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4827) was read the third time and passed.

Mr. GRASSLEY. Mr. President, 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.

## ORDERS FOR THURSDAY, DECEMBER 7, 2000

Mr. GRASSLEY. Mr. President, for our majority leader, I ask unanimous consent that when the Senate completes its business today, it recess until the hour of 10 a.m. on Thursday, December 7. I further ask consent that on Thursday, immediately following the prayer, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then begin a period of morning business until 2 p.m. with Senators speaking for up to 10 minutes each with the following exceptions: Senator MURRAY, 10 to 11 a.m.; Senator THOMAS or his designee, 11 to 12 noon; Senator GRAHAM of Florida, from 12 to 12:30, and the remaining time be equally divided in the usual form.

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

## PROGRAM

Mr. GRASSLEY. Mr. President, for the information of all Senators, the Senate will be in a period of morning business from 10 a.m. until 2 p.m. tomorrow. By previous consent, at 2 p.m. the Senate will have up to 2 hours remaining for debate on the bankruptcy conference report. A vote is scheduled to occur at 4 p.m. on the conference report.

Senators should be aware that a vote on a continuing resolution is expected during tomorrow's session. Therefore, a vote could occur on that measure.

ORDER FOR RECESS

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order following the remarks of Senator KENNEDY, Senator DORGAN, and Senator GRASSLEY.

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

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

BANKRUPTCY REFORM ACT OF 2000—CONFERENCE REPORT—Continued

Mr. KENNEDY. Mr. President, as I understand it, under the time agreement I was allocated 28 minutes.

The PRESIDING OFFICER. Just under 28 minutes.

Mr. KENNEDY. Will the Chair be kind enough to let me know when I have 3 minutes remaining?

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. Mr. President, I rise to urge the Senate to reject the flawed bankruptcy bill. For 3 years, the proponents and opponents of the so-called bankruptcy reform bill have disagreed about the merits of the bill. The credit card industry argues that the bill will eliminate fraud and abuse without denying bankruptcy relief to Americans who truly need it. But scores of bankruptcy scholars, advocates for women and children, labor unions, consumer advocates, and civil rights organizations agree that the current bill is so flawed that it will do far more harm than good. Every Member of the Senate should analyze these arguments closely. We can separate the myths from the facts and determine the winners and the losers.

A fair analysis will conclude that this bankruptcy bill is the credit card industry's wish list, a blatant effort to increase their profits at the expense of working families. We know the specific circumstances and market forces that so often push middle-class Americans into bankruptcy. Layoffs are a major part of the problem. In recent years, the rising economic tide has not lifted all boats. Despite low unemployment, a soaring stock market, and large budget surpluses, Wall Street cheers when companies, eager to improve profits by downsizing, lay off workers in large numbers.

During the period of January to October in the year 2000, the Bureau of Labor Statistics reported that there were a total of 11,364 layoffs resulting in more than 1.29 million Americans who were unemployed. In October 2000 alone, there were 874 mass layoffs—a layoff of at least 50 people—and 103,000 workers were affected.

Often when workers lose a good job, they are unable to recover. In a study of displaced workers in the early 1990s, the Bureau of Labor Statistics recorded that only about a quarter of previously laid-off workers were working at full-time jobs paying as much as or more than they had earned at the job they lost. Too often, laid-off workers are forced to accept part-time jobs, temporary jobs, or jobs with fewer benefits or no benefits at all.

I am always reminded that if you were to compare the economic growth in the immediate postwar period, from 1948 up to 1972, and broke the income distribution into fifths in the United States, virtually every group moved up together. All of them moved up at about the same rate. If you looked at the 1970s, and particularly in the 1980s and 1990s, and if you broke the income distribution down into five economic groups, you would see that the group that has enhanced its economic condition immeasurably is the top 20 percent. The lower 20 percent are individuals who have actually fallen further and further behind in terms of their economic income. The next group has fallen still further behind.

It is really only when you get to about the top 40 percent of the incomes for American families that you see any kind of increase. It is the group in the lower 60 percent who, by and large, have been affected by these significant layoffs. They have found it difficult to make very important and significant adjustments in their economic condition. They are hard-working men and women who are trying to provide for a family, ready and willing to work, want to work, but they see dramatic changes in terms of their income and they are forced into bankruptcy.

We see that many bankrupt debtors are reporting job problems. There are various types of adverse conditions. Many have been fired and some are victims of downsizing. We also find that more women are in the workforce and contributing significantly to the economic stability of the family. If they are victims of a job interruption, it has a significant, important, and dramatic impact on the income of the family.

If you look at the principal reasons for bankruptcies, more than 67 percent of debtors talk about employment problems. So these are hard-working Americans who are trying to make ends meet and we find that the economic conditions are of such a nature that they are forced into bankruptcy. Nobody is saying they should not pay or meet their responsibilities. But we also ought to recognize that in many of these circumstances it is not necessarily the individual's personal spending habits that force them into bankruptcy.

Another factor in bankruptcy is divorce. Divorce rates have soared over the past 40 years. For better or worse, more couples than ever are separating, and the financial consequences are particularly devastating for women. Divorced women are four times more likely to file for bankruptcy than married women or single men. In 1999, 540,000 women who headed their own households filed for bankruptcy to try to stabilize their economic lives, and 200,000 of them were also creditors trying to collect child support or alimony. The rest were debtors struggling to make ends meet. This bankruptcy bill is anti-woman, and this Republican Congress should be ashamed of its attempt to put it into law.

This chart shows the changes between the men and women in bankruptcy. You see that in 1981 a relatively small percentage of the bankruptcies were by single women. The red reflects the men and women going into bankruptcy. The yellow represents men alone. That was in 1981. In 1991, you see joint bankruptcy is continuing at a relatively slow pace. What you see is the men gradually going up. What happens with women is that it goes up exponentially. Over the period of the last 8 years, it is the women, by and large, who have been going into bankruptcy.

Is that to say that these women in 1999 aren't willing to work like the ones in 1991 or 1981, that they are unwilling to pull their fair share? No, Mr. President. There is another explanation.

The other explanation is, when we have the tragic circumstances of divorces, more likely than not the women are unable to get the alimony and unable to get the child support, through no fault of their own, and they end up going into bankruptcy. That is a primary reason for the increase in bankruptcies—although the total numbers of bankruptcies now have basically flattened out or have been reduced.

We are pointing out that economic conditions are responsible for about half of the bankruptcies. The fact is that downsizing has taken place. In spite of the fact that others who have invested in these companies have made enormous amounts of money, many of those employees have been laid off and have been pushed to the side.

These are hard-working men and women. The interesting fact to me is that people filing for bankruptcy are often middle-class people who want to work. These are not Americans trying to get by without playing by the rules. They are working, and they want to work, but there are circumstances that undermine their financial stability. As a result of these circumstances, there is an increase in the number of bankruptcies. It may be because of the inability to get child support or alimony, through no fault of their own.

So we have a responsibility to make sure, if we are going to pass legislation, that we are going to be fair to these individuals, rather than to be unduly harsh and penalize them. That is what I believe this current legislation does. It holds them to an unduly harsh standard. That is not only my assessment, it is the assessment of virtually all of the groups —advocates either for children or women or workers or those who fight for basic civil rights. These are organizations and groups that have spent a great deal of time advocating for children or women. They have reached the same conclusion as the 116 bankruptcy professors in law schools all over the country—not located in any particular area—who have examined this bill.

In the few moments before we voted yesterday, I asked the other side if they could name one single organization advocating for women and children and working families that supports this legislation and thinks it is fair to them. There isn't a single one. That ought to say something. It is not only those of us who are opposed to it who say it is grossly unfair, it is everyone. When you have a piece of legislation on the floor and there is a division, generally certain organizations support it and certain organizations don't. Not on this one. All the advocacy groups oppose it. Virtually all of them oppose it because they know it is unduly harsh and unfair to children, women, and workers, and unfair to consumers.

Mr. President, another major factor in the bankruptcy is the high cost of health care. 43 million Americans have no health insurance, and many millions more are underinsured. Each year, millions of families spend more than 20 percent of their income on medical care, and older Americans are hit particularly hard. A 1998 CRS report states that even though Medicare provides near-universal health coverage for older Americans, half of this age group spend 14 percent or more of their after-tax income on health costs, including insurance premiums, copayments, and prescription drugs.

Does that have a familiar ring to it? We just had a national debate, and the Presidential candidates were asked about prescription drugs. Why? Because of the escalation of the cost of prescription drugs. How does that actually impact and affect families? Well, it is a principal cause of bankruptcy for many families. They just cannot afford to pay for prescription drugs and meet the other kinds of needs they have in terms of paying rent or putting food on the table. They go in a declining spiral and they end up in bankruptcy.

These are individuals in families from whom the credit card industry believes it can squeeze another dime. The industry claims they are cheating and abusing the bankruptcy system and are irresponsibly using their charge cards to live in a luxury they can't afford.

I think these charts are enormously interesting, and I find them so compelling when you see what is happening and what is driving so many of these families into bankruptcy.

The high cost of prescription drugs: the Presidential candidates spoke about it and are talking about the importance of it. Every candidate across this country in this last campaign was saying what they were going to try to do to relieve the cost of prescription drugs.

There are millions and millions of senior citizens who can't afford to wait for an answer by Congress. What has happened to them? They go into bankruptcy. Similarly, we see the very tragic growth of the breakups of families and the fact that too many of those involved in those relationships are unwilling to meet their responsibilities to their children or to pay alimony.

What has been the result to women? They go into bankruptcy. Or, as we have seen as a result of the developing of our economy and these extraordinary mergers—fortunes are being made, on the one hand, by certain investors, but others who have given their lives to these companies and have received good compensation suddenly are cast aside. They are unable to quickly adjust to their changed economic conditions. What happens to them? They go into bankruptcy.

Certainly we need to have bankruptcy legislation. But we also ought to have bankruptcy legislation that is going to be fair and that is going to be just and not punitive. We say that this legislation is punitive. It isn't only myself and many of our colleagues, but it is also those who have spent their lives studying bankruptcy, teaching bankruptcy. Judges on the bankruptcy courts are dealing with it every single day and have virtually uniformly come to the conclusion that this legislation is unfair, unjust, unwise, and doesn't deserve to pass the Senate.

This legislation unfairly targets middle-class and poor families. It leaves flagrant abuses in place.

Time and time again, President Clinton has told the Republican leadership that the final bill must include two important provisions—a homestead provision without loopholes for the wealthy, and a provision that requires accountability and responsibility for those who unlawfully and often violently bar access to legal health services. The current bill includes neither of those provisions.

The conference report includes a half-hearted, loophole filled homestead provision. It will do little to eliminate fraud.

That is another failing of this legislation. It creates a loophole for wealthy individuals to effectively hide their income. That kind of loophole will not be available for hard-working Americans who run into the kinds of problems I have outlined. But the homestead provision that is left in this bill still can be abused by hiding millions in assets from creditors.

For example, Allen Smith of Delaware, a State with no homestead exemption, and James Villa of Florida, a State with an unlimited homestead exemption, were treated very differently by the bankruptcy system. One man eventually lost his home. The other was able to hide $1.4 million from his creditors by purchasing a luxury mansion in Florida.

The Senate passed a worthwhile amendment to eliminate this inequity. But that provision was stripped from the conference report.

Do we understand? The Senate adopted a provision to deal with the kind of inequity which I have just outlined—listen to this—Allen Smith of Delaware, a State with no homestead exemption, and James Villa of Florida, a State with an unlimited homestead exemption, were treated differently. One man eventually lost his home. The other was able to hide $1.4 million from his creditors by purchasing a luxury mansion in Florida.

The Senate passed a worthwhile amendment to eliminate this inequity. But that provision was stripped from the conference report.

Why? Why was it stripped? Who had the influence? Who authored that amendment? It would be interesting to find out. We don't know because the final conference didn't include members of our party or individuals who are against it. The provision just happened to show up in the conference report. Obviously, it is going to benefit some individuals to the tune of millions of dollars.

Surely, a bill designed to end fraud and abuse should include a loophole-free homestead provision. The President thinks so. In an October 12, 2000 letter, White House Chief of Staff, John Podesta says, ''The inclusion of a provision limiting to some degree a wealthy debtor's capacity to shift assets before bankruptcy into a home and in a State with an unlimited homestead exemption does not ameliorate the glaring omission of a real homestead cap.''

The homestead loophole should be closed permanently. It should not be left open just for the wealthy. Yet this misguided bill's supporters refuse to fight for such a responsible provision with the same intensity they are fighting for the credit card industry's wish list, and fighting against women, against the sick, against laid-off workers, and against other average individuals and families who will have no safety net if this unjust bill passes.

This legislation flunks the test of fairness. It is a bill designed to meet the needs of one of the most profitable industries in America—the credit card industry. Credit card companies are vigorously engaged in massive and unseemly nation-wide campaigns to hook unsuspecting citizens on credit card debt. They sent out 2.87 billion—2.87 billion—credit card solicitations in 1999. And, in recent years, the industry has begun to offer new lines of credit

targeted at people with low incomes—even though the industry knows full well that these persons cannot afford to pile up credit card debt.

Supporters of the bill argue that the bankruptcy bill isn't a credit card industry bill. They argue that we had votes on credit card legislation, and, that some amendments passed and others did not. But, to deal effectively and comprehensively with the problem of bankruptcy, we have to deal with the problem of debt. We must ensure that the credit card industry doesn't abandon fair lending policies to fatten its bottom line, or ask Congress to become its federal collector for unpaid credit card bills.

I have this letter from the American Bankruptcy Service in St. Paul, MN. It references the ''fresh start Visa Card.''

They offer a unique opportunity that could be of great benefit to firms and their clients. By becoming a debtor, they will have the ability to market an unsecured Visa credit card—the fresh start card—to their clients who have filed for chapter 7 bankruptcy, if they have completed the ''341 meeting'' of creditors with no outstanding issues with the trustees, have not yet received a discharge in bankruptcy, or have attached a copy of the bankruptcy notice to their Visa application.

They say several law firms, especially those representing consumer debtors in bankruptcy, have requested the ability to distribute the ''fresh start Visa'' application to their clients. For each credit card issued, their firm will receive $10.

The credit card industry is marketing to people who are already in bankruptcy.

Do we understand that? We heard all of the very pious speeches and statements—what we want is accountability; get those hard-working people and teach them the value of the dollar; teach them a lesson. Well, boy, this is apparently teaching someone a lesson here because they are already going to be eligible, according to the American Bankruptcy Service, to get another Visa card even though they have been in bankruptcy.

They are out there trying to tempt them, bring them in one more time, and squeeze out a few extra dollars. Where is the responsibility of the credit card industry in this area? Where is their accountability? Why is this all one way?

This bill is tough on women. It is tough on children. It is tough on workers who have had severe medical problems and had to get prescription drugs. It is tough on older workers who haven't gotten their Medicare and do not have health insurance. It is tough on all of them. But it is not very tough at all on the credit card industry that has contributed to the fact that this particular family or individual will be in bankruptcy.

Where is the fairness in this? It is not there.

Two years ago, the Senate passed good credit card disclosure provisions that added fair balance to the bankruptcy bill. It's disturbing that the provisions in the bill passed by the Senate this year were watered down to pacify the credit card industry. Even worse, some of the provisions passed by the Senate were stripped from the conference report.

The hypocrisy of this bill is transparent. We hear a lot of pious Republican talk about the need for responsibility when average families are in financial trouble, but we hear no such talk of responsibility when the wealthy credit card companies and their lobbyists are the focus of attention.

The credit card industry and congressional supporters of the bill attempt to argue that the bankruptcy bill will help—not harm—women and children. That argument is laughable.

Proponents of the bill say that it ensures that alimony and child support will be the number one priority in bankruptcy. That rhetoric masks the complexity of the bankruptcy system—but it doesn't hide the fact that women and children will be the losers if this bill becomes law.

Under the current law, an ex-wife trying to collect support enjoys special protection. But under this pending bill, credit card companies are given a new right to compete with women and children for the husband's limited income after bankruptcy.

It is true that this bill moves support payments to the first priority position in the bankruptcy code, but that only matters in the limited number of cases in which the debtor has assets to distribute to a creditor. In most cases, over 95 percent, there are no assets and the list of priorities has no effect.

This issue has been debated and debated and debated. It is amazing to me, as we work in the remaining few hours of this session, that we are not considering increasing the minimum wage for workers who have waited a long time to get a $1 increase from $5.15 an hour. No, we are not willing to pass that legislation. We are not willing to come back and pass and give consideration to reauthorizing an elementary and secondary education bill. We are not being asked when we come back to even deal with the Patients' Bill of Rights. No, we are being asked to look out for the credit card industry in a very significant and massive giveaway. It is wrong. This bill does not deserve to pass. I hope it will not.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). Under the previous order, the Senator from North Dakota is to be recognized.

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

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

## EARLY PRISON RELEASE

Mr. DORGAN. Mr. President, on November 23 the Washington Post had a story about a murderer that I want to call to my colleagues' attention. This is the picture of the alleged murderer, Elmer Spencer, Jr. The headline of the story reads: ''Sex Offender's Arrest Makes an Issue of Mandatory Release.''

Let me describe for a moment what I read in the story and how I related it to things I have spoken about on the floor of the Senate before and how disappointed I am that nothing ever seems to change.

The young boy who was murdered a couple of weeks ago was a 9-year-old from Frederick, MD. His name was Christopher Lee Ausherman. He attended fourth grade at the South Frederick Elementary School. He had two brothers. The story said he liked Pokemon cards and was developing a real passion for fishing. He was apparently in his neighborhood, very close to his home on the street or sidewalk, and then a maintenance found his badly beaten, naked body in a dugout at McCurdy Field in Frederick, MD. Christopher Lee Ausherman had been sexually assaulted and strangled.

The story described how the arrest was made. I want to talk about the fellow who has been arrested and charged with this murder. The fact that he was on the streets in this country to murder anyone is unconscionable and shameful.

Elmer Spencer, Jr. was sentenced to 5 years for assault and battery in 1977, 23 years ago, and released 3 years later. Within a year of his release, he raped and attempted to strangle an 11-year-old boy. He paid him $20 to drink liquor and then tried to strangle him with shoelaces. Spencer left him unconscious after raping him. The boy regained consciousness as Elmer Spencer's attention was diverted, and miraculously escaped. Elmer Spencer was sentenced to 22 years in prison for that crime and released in 1994 after serving 14 years in prison.

In 1996, Elmer Spencer, Jr. was charged with attempted rape and three counts of assault. He attacked the police officers responding to the cries for help from a woman whom he was attempting to rape. He was sentenced to 10 years, and, amazingly, released on November 14 of this year, after serving just 3 and a half years.

Five days later, Christopher Lee Ausherman, a 9-year-old boy from Frederick, MD, was murdered by this man. Five days after being released from prison, having served 3 and a half years of 10-year sentence, this pedophile, this man who had attempted murder previously, killed this 9-year-old boy.

The question is, When will we learn in this country? We know who is committing the crimes, especially the violent crimes, in most cases. It is someone who has committed other violent crimes, been put in prison, and often released early.

I spoke to the family of this 9-year-old boy. There is not much you can do to console that family. They are grieving, obviously, for the loss of this young boy. But I told them some Members are working very hard to try to change the circumstances of release for violent prisoners.

I have spoken many times on this floor about other crimes that are exactly the same—different victims, but exactly the same. Young Bettina Pruckmayr—I brought her picture to the floor of this Senate—a 26-year-old human rights attorney who moved to this town with such great expectations and passion to do work in this area. On December 16, 1995, she was at an ATM machine and a man named Leo Gonzales Wright apprehended her there. He was a man who should have been in prison. He had committed many previous crimes.

At the age of 19, Leo Gonzales Wright was sentenced to 15 to 60 years for armed robbery and murder. He was released after 17 years. During those 17 years, he compiled a record of 38 disciplinary reports and transfers due to drug use, lack of program involvement, weapons possession in prison, and assaults on inmates and staff. Despite all that, he was let out early, so that in December of 1995 he was on the streets here in Washington, DC. He was able to stab young Bettina Pruckmayr 38 times. It wasn't that we didn't know he was a violent offender. He had used a butcher knife just four days earlier to rob and carjack a female motorist. While on probation and parole, he was picked up for drugs and let right back out on the streets. As a result, Bettina Pruckmayr was killed.

Jonathan Hall. I have spoken about Jonathan Hall here on the floor of the Senate; it is exactly the same story. Jonathan was a 13-year-old from Fairfax, VA. The boy had some difficulties, but in the newspaper stories I read about young Jonathan neighbors described him as a smart young boy, starved for affection. His mother reported him missing in December, 1995. Twelve days later, his body was found at the bottom of a pond near his home. He had been stabbed over 60 times with a phillips-head screwdriver. After this young boy had died, they found grass between his fingers. Despite being stabbed 60 times, he was not dead when his attacker left him. This young boy tried to claw his way out of that pond, and they found grass and mud between his fingers, but he didn't make it. James Buck Murray, who lived right there in the neighborhood, killed him. Why was he living there? In 1970, Murray was sentenced to 20 years for slashing the throat of a cab driver, stealing the cab, and leaving the driver for dead. But a mere 3 years later, while on work-releasee, he abducted a woman, was convicted of kidnapping, and sent back to prison. But again he was let out. And then young Jonathan Hall, of course, was murdered. By someone we knew? Of course. By someone violent? Of course. Murray had been put in prison and released early.

Shame on those who run our prison system. Shame on the laws that exist, that allow this to happen.

I have asked, in this recent case in Maryland with Christopher Lee Ausherman, how could it be that a man who has been involved in such violent crimes—how could it be that, when sentenced to 10 years, he is released after 3½? This is after many other crimes, mind you, and 5 days after his release, he kills a 9-year-old boy. How can it be he is released that early?

The answer? Unforgivable ignorance in the construction of public policy. I am sorry to say that about those who did it, but I cannot contain myself. Those who did it say those who served in prison for previous convictions can accumulate additional good-time credits at an accelerated pace against their current sentence because they have been in prison before. That is ignorance. We ought not reward anyone with ample or better good-time benefits because they served in prison before. Violent offenders ought to be put in prison and that ought to be their address until the end of their prison term. End of story.

I am so sick and tired of reading stories about innocent people—and I have mentioned just three. I have many more. I am so sick and tired of reading the stories about state governments that allow violent offenders out of prison to walk up and down the streets of this country and kill again.

Do you know, if you live in the United States of America you are seven times more likely to be murdered than if you live in France? The murder rate in our country is 7 times that of Germany, 6 times that of Israel, 10 times that of Japan, 7 times that of Spain. Is there something wrong here? I think so.

Let me show you what is happening in our prison system. For all the talk about truth in sentencing, if state convicts you of murder in this country on average you are going to be in prison 10 years. You are going to get sentenced for 21 years but you are going to be serving about 10 years in prison for murder. Rape? You can expect to serve about 5 years in prison. They will sentence you to 10 on average, but you are only going to be there about 5. For robbery you are going to be sentenced to a littel over 8 years, perhaps, and you will serve 4 years.

What is the answer to all this? Why are these folks let out early? Why would we decide in this country that a murderer should only serve half of his or her sentence? The prison authorities and others who construct these laws tell us the reason they have to dangle good-time benefits in front of these prisoners, including violent offenders, is because it allows the authorities to better manage them while in prison. In other words, if they behave while in prison they can get out early. That is a terrific incentive, they say, for prison inmate management.

I wonder, I ask the question about the management of Elmer Spencer, Jr. I wonder if I could get names of the people who decided the best way to manage Elmer Spencer, Jr.'s time in prison was to dangle in front of him the opportunity to be released 7 years early, so he could be on the streets in late November of this year and murder a 9-year-old boy? I guess the word is ''allegedly murdered him'' because he is now charged with the crime, but am told there is little question about the guilt in this case.

I wonder if we could have the names of those who have decided it is appropriate for James ''Buck'' Murray to be on the streets, or Leo Gonzales Wright to be on the streets after being convicted of murder, only to murder again; violent criminals to be back on the streets so Bettina and young Jonathan and all the others are victims.

What is the answer? The answer is simple. This is not rocket science. It is simple. It is to decide as a policy—as I have advocated for some while, regrettably unsuccessfully—that in this country we distinguish between those who commit violent crimes and those who commit nonviolent crimes. In my judgment, we ought to have a judicial system in America that says: If you commit a violent act, understand this. All over America, understand this and listen well: If you commit a violent act, there will be no good time, there will be no parole, there will be no time off for good behavior. You will go to prison and the sentence administered by the judge in your trial will be the sentence that you serve in prison. No time off for good behavior—period.

We need to do that in this country. I have tried and tried and tried again in this Senate to advance that public policy, unsuccessfully. But I am not going to quit. This 106th Congress is ending without great distinction. We didn't even discuss the issue of violent crime. We should. I hope we will in the 107th Congress. I hope perhaps there are Republicans and Democrats who understand that there is nothing partisan about this issue. But there is a crying need in this country to decide that violent offenders must be put away and kept away for their entire term of incarceration.

In 1991, the Bureau of Justice Statistics found there were 156,000 people in State prisons for offenses that they committed while they were on parole from a previous conviction.

Let me say that again because it is important: 156,000 people were incarcerated for criminal offenses that they committed while they were out on parole from a previous prison sentence.

That is exactly the case in the description of the murder I started with today. It is exactly the case with Elmer Spencer, Jr., out early and a 9-year-old is dead. This is not an unusual story. I could speak for 2 hours and more, and not just about Maryland or Virginia or the District of Columbia. There is a courageous young woman

from North Dakota named Julie Schultz. Julie Schultz is a friend of mine, a mother of three from Burlington, ND. She was going to a League of Cities meeting in Williston, ND, on a quiet North Dakota highway on an afternoon with very little traffic and stopped at a rest stop. At this rest stop Julie Schultz, mother of three, encountered a man named Gary Wayne Puckett, who should have been in prison but was released early in the State of Washington. This issue knows no State boundaries. He assaulted Julie Schultz and then slit her throat and left her for dead.

I won't describe the events that allowed her to survive, but they were quite miraculous. But Gary Wayne Puckett should never have been near a rest stop on a highway in North Dakota on that day. He was released early.

Again, we know better than that. State governments should know better than that. Public policy should know better than that. We can do better than that.

It is my intention to reintroduce in the coming Congress, in January in the coming Congress, legislation that I have introduced previously. That is legislation that would provide financial penalties in the truth-in-sentencing grants that are given from the Federal Government to the State government, for those States that fail to enact laws that eliminate good-time credits, eliminate the dangling of time off for good behavior. My legislation will use these funds to provide financial incentives for states that say, instead, by statute: If you are convicted of a violent crime, understand your address will be your jail cell until the end of your term.

When and if we do that in this country, finally, innocent people walking up and down the streets of America will not be threatened by a violent murderer, a kidnaper, a killer, a rapist, someone who is let out early, and poses a severe threat to innocent citizens like Christopher Lee Ausherman.

Mr. President, my understanding is the Senate is now in morning business but there will be additional debate on bankruptcy; is that correct?

The PRESIDING OFFICER. At the conclusion of the Senator's remarks, Senator GRASSLEY will be recognized to speak on the bankruptcy bill.

Mr. DORGAN. Mr. President, as soon as Senator GRASSLEY comes to the floor, I will be happy to relinquish the floor. I want to speak for 2 minutes on another subject. As soon as he comes, I will suspend.

## THE ECONOMY

Mr. DORGAN. Mr. President, I worry very much that we are facing a slowdown in our economy that could be very significant. I hope Mr. Greenspan and the Federal Reserve Board in December will decide they should begin to cut interest rates. Six increases in interest rates since June 1999 have clearly slowed growth in this country in a way, in some respects, that put us in a perilous position, with the liquidity crisis and a range of other issues that could very well derail the longest and strongest period of economic growth in American history.

I will speak more about this later because I see Senator GRASSLEY is about ready to speak on bankruptcy. I do want to say this. I have come to the floor previously when the Federal Reserve Board was searching for evidence of inflation—searching in closets, under beds, in virtually every crevice, trying to find some evidence of inflation, and used that fear to increase interest rates six times. We have had the highest real interest rates for many years in this country, and they threaten, in my judgment, to derail this economic growth.

I hope the Fed in December will think seriously about beginning to reduce interest rates to preserve an opportunity for continued growth.

Mr. President, I yield the floor.

## MAJORITY COMMITTEE ASSIGNMENTS

Mr. GRASSLEY. Mr. President, pursuant to S. Res. 354, on behalf of the leader, I submit the following two Republican Senators to be members of standing committees of the Senate. The appointments that will be made are Senator NICKLES to be a member of the Banking Committee and Senator VOINOVICH to be a member of the Agriculture Committee.

The PRESIDING OFFICER. The appointments will be made.

## BANKRUPTCY REFORM ACT OF 2000—CONFERENCE REPORT—Continued

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the previous debate time with respect to the bankruptcy bill begin at 1:45 p.m. on Thursday, with a vote then to occur on passage at 3:45 p.m.

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

Mr. GRASSLEY. Mr. President, I rise today to speak yet again on the topic of bankruptcy reform. Yesterday, we invoked cloture on the Bankruptcy Reform Conference Report with 67 votes. That's a solid bipartisan level of support. We have a conference report where both the majority leader and the minority leader voted to cut off debate. At long last, Congress is on the verge of enacting fundamental bankruptcy reform. Earlier this year, the Senate passed bankruptcy reform by an overwhelming vote of 83–14. Almost all Republicans voted for the bill and about one-half of the Democrats voted for it as well. Despite this, a tiny minority of Senators used unfair tactics to prevent us from going to conference with the House of Representatives in the usual way. So, we put the bankruptcy bill into another conference report. The important thing about this conference committee—which I have said before but want to reiterate now—is that the committee was evenly divided between three Democrats and three Republicans. There was no Republican majority on the conference committee. We would not be here if not for support from Democrats on the conference committee. So all of these objections to the effect that Republicans used some procedural trick to avoid dealing with the minority is simply and flat out false.

As I am speaking, the House passed the bankruptcy conference report by a voice vote. We are almost there. And with the level of bipartisan support demonstrated in yesterday's vote, I am confident we'll send the best bill we can to the President.

As I have stated before on the Senate floor on numerous occasions, every bankruptcy filed in America creates upward pressure on interest rates and prices for goods and services. The more bankruptcies filed, the greater the upward pressure. I know that some of our more liberal colleagues are trying to stir up opposition to bankruptcy reform by denying this point and saying that tightening bankruptcy laws only helps lenders be more profitable. This just is not true. Even the liberal Clinton administration's own Treasury Secretary Larry Summers indicated that bankruptcies tend to drive up interest rates, Mr. President, if you believe Secretary Summers, bankruptcies are everyone's problem. Regular hardworking Americans have to pay higher prices for goods and services as a result of bankruptcies. That's a compelling reason for us to enact bankruptcy reform during this Congress.

Of course, any bankruptcy reform bill must preserve a fresh start for people who have been overwhelmed by medical debts or sudden, unforeseen emergencies. That is why this conference agreement allows for the full, 100 percent deductibility of medical expenses. This is according to the nonpartisan, unbiased General Accounting Office. Bankruptcy reform must be fair, and the bicameral agreements on bankruptcy preserves fair access to bankruptcy for people truly in need.

These have been good times in our Nation. Thanks to the fiscal discipline initiated by Congress, and the hard work of the American people, we have a balanced budget and budget surplus. Unemployment is low and so is inflation. But in the midst of this incredible prosperity, about 1½ million Americans declared bankruptcy in 1998 alone. And in 1999, there were just under 1.4 million bankruptcy filings. To put this in some historical context, since 1990, the rate of personal bankruptcy filings has increased almost 100 percent.

Now we see signs of slowing in the economy. We see consumer confidence declining. We see the stock market losing value. We need to fix our bankruptcy system before a recession comes

and we're overwhelmed with huge numbers of bankruptcies. According to a recent article in the New York Post, we as a nation are looking down the barrel of a new and larger epidemic of bankruptcies. This article quoted a recent study from a New Jersey research firm that predicts a 10–20 percent increase in bankruptcies next year. Another expert quoted in the article indicates that the increases may be much greater. We need to act now.

As I indicated earlier, we have been doing pretty well lately as a country. With large numbers of bankruptcies occurring at a time when Americans are earning more than ever, the only logical conclusion is that some people are using bankruptcy as an easy out. The basic policy question we have to answer is this: Should people with means who declare bankruptcy be required to pay at least some of their debts or not? Right now, the current bankruptcy system is oblivious to the financial condition of someone asking to be excused from paying his debts. The richest captain of industry could walk into a bankruptcy court tomorrow and walk out with his debts erased. And, as I described earlier, the rest of America will pay higher prices for goods and services as a result.

I ask my liberal friends to think about that for a second. If we had no bankruptcy system at all, and we were starting from scratch, would we design a system that lets the rich walk away from their debts and shift the costs to society at large, including the poor and the middle class? That would not be fair, but that is exactly the system we have now. Fundamental bankruptcy reform is clearly in order.

I want my colleagues to know that the conference agreement preserves the Torricelli-Grassley amendment to require credit card companies to give consumers meaningful information about minimum payments on credit cards. Consumers will be warned against making only minimum payments, and there will be an example to drive this point home. As with the Senate-passed bill, the bicameral agreement will give consumers a toll-free phone number to call where they can get information about how long it will take to pay off their own credit card balances if they make only the minimum payments. This new information will truly educate consumers and improve the financial literacy of millions of American consumers.

Yesterday's vote shows that the mainstream of opinion in the Senate supports bankruptcy reform. But that has not stopped the tiny handful of liberals who oppose bankruptcy reform have waged a campaign to spread disinformation about the bankruptcy bill. The article in Time magazine that Senator WELLSTONE constantly refers to is a case in point. This article purports to prove that bankruptcy reform will harm low-income people or people with huge medical bills. This article is simply false. I spoke about this on the floor last summer but a little reminder might be helpful for some of my colleagues who don't follow this bill as closely as I do.

What is most interesting about this Time article is what it fails to report. Time, for instance, fails to mention that the means test, which sorts people who can repay into repayment plans, doesn't apply to families below the median income for the State in which they live. The Time article then proceeds to give several examples of families who would allegedly be denied the right to liquidate if bankruptcy reform were to pass. Each of these families, however, would not even be subjected to the means test since they earn less than the median income. While this sounds technical, it's important—not even one of the examples in the Time article would be affected by the means test.

The Time article fails to mention the massive new consumer protections in our bankruptcy reform bill. The Time article fails to mention the new disclosure requirements on credit cards regarding interest rates and minimum payments. In short, the Time article fails to tell the whole truth. I think that the American peopled deserve the whole truth.

The truth is that these bankruptcies represent a clear and present danger to America's small businesses. Growth among small businesses is one of the primary engines of our economic success. With the predictions of a new tidal wave of bankruptcies next year, we have to be concerned about a domino effect. As more and more consumers use bankruptcy to escape paying their debts, more and more small businesses will face unsustainable losses. And if we don't act to protect small businesses, then one of the main sources or our prosperity will be in serious jeopardy. As responsible legislators, we cannot let that happen.

The truth is that bankruptcies hurt real people. Sometimes that is inevitable, but it is not fair to permit people who can repay to skip out on their debts. I think most people, including most of us in Congress, have a basic sense of fairness that tells us bankruptcy reform is needed to restore balance.

I will share with you what some of my constituents are telling me about bankruptcy reform. I will not go through all of these quotes. But a constituent from Des Moines, IA, said:

> It is insane that such a practice has been allowed to continue, only causing higher prices to consumers. . . . Debtors should be required to pay their debt.

A lady from Keokuk, IA:

> Bankruptcies are out of hand. It's time to make people responsible for their actions—do we need to say this?

I could go on and on. But I have given you two examples of many I have gotten from my State. Considering the fact that there were 83 people who voted for this bill when it passed the Senate the first time, this message must be getting through loud and clear in almost all of the 50 States in America or we would not have had that overwhelming vote.

We are merely saying, if you have the ability to repay your debt and you go into bankruptcy court, you are not going to get off scot-free.

The time has come to get this bill on the President's desk. That is what I hope we do tomorrow afternoon at 3:45.

I yield the floor.

## RECESS UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 10 a.m. tomorrow.

Thereupon, the Senate, at 4:50 p.m., recessed until Thursday, December 7, 2000, at 10 a.m.