

has been willing to work with members to release the hold.

#### BANKRUPTCY REFORM ACT OF 1999—CONTINUED

Mr. KENNEDY. Mr. President, I understand we are back on the bankruptcy legislation; is that correct?

The PRESIDING OFFICER (Mr. SESSIONS). The Schumer amendment has not been disposed of.

Mr. KENNEDY. With the understanding of the Senator from New York, I ask unanimous consent we temporarily lay aside that amendment.

Mr. GRASSLEY. Reserving the right to object, and I will not object, I previously talked to the Senator from Massachusetts about time agreement on his amendment. I prefer to forego a time agreement and have him proceed accordingly. I have no objection.

The PRESIDING OFFICER. Without objection, the Senator from Massachusetts is recognized.

#### AMENDMENT NO. 2652

(Purpose: To amend the definition of current monthly income to exclude social security benefits)

Mr. KENNEDY. I call up amendment numbered 2652.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 2652.

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

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

The amendment is as follows:

On page 11, line 2, insert before the first semicolon ", but excludes benefits received under the Social Security Act".

Mr. KENNEDY. Mr. President, this is a rather simple amendment. The amendment I have offered will protect a debtor's Social Security benefits during bankruptcy. This amendment is very important to older Americans. I hope my colleagues will support it as our House colleagues supported it last year.

As currently written, the means test in the pending bill will require debtors to use their Social Security benefits to repay creditors. My amendment excludes Social Security benefits from the definition of "current monthly income" and ensures that those benefits will never be used to repay credit card debt and other debt.

This amendment is particularly important to seniors. Between 1991 and 1999 the numbers of people over 65 who filed bankruptcy grew by 120 percent. If we look over the figures from 1991 to 1999 by age of petitioner, we see the growth of those that are going through bankruptcy primarily have increased in the older citizen age group. This is primarily a result of the downsizing, dismissing older workers and because

of health care costs—primarily they have been dropped from health insurance. As the various statistics show, increasing numbers of individuals have been impacted because of the prescription drugs.

Debtors filing a medical reason for bankruptcy, as the chart shows, reflects the fact we have gotten a significant increase in the number of older people who have gone into bankruptcy. The debtors who file as medical reasons for bankruptcy, we find, increases dramatically for older workers primarily because of health care costs more than any other factor.

We believe very strongly those individuals, most of whom are dependent upon Social Security as virtually their only income ought to have those funds protected so they will be able to live in peace with some degree of security and some degree of dignity.

This is sufficiently important. One can ask, why are we doing this now rather than before? The reason it was not necessary before is because the Social Security effectively was protected with a series of protections that were included in the existing bankruptcy law which have not been included in this legislation. Therefore, without this kind of an amendment, they would be eligible for creditors. We think protecting our senior citizens, those on Social Security, as a matter of both public policy and the fact of the importance of their contributions, obviously, in terms of society, should be protected during their senior years.

Today, many Americans work long and hard into the senior years. A growing percentage of the population is over the age of 85 and predominantly female. We see over the period of the next 10 years our elderly population will double and the increase in the percentage of women is going to increase significantly, as well. Others may be able to find alternative employment but at substantially lower wages or without health and other benefits that become increasingly important with age.

In spite of all of the efforts to slow down the discrimination against elderly, in too many circumstances in our country today, the elderly are discriminated against in terms of employment.

Older Americans sometimes resort to short-term, high-interest credit when faced with unemployment because they assume their unemployment will be temporary. They hope their use of credit or credit card debt will serve as a bridge to cover the necessities until they start receiving paychecks again. Due to their age, however, many of these individuals never earn a salary comparable to the pay they lost. They find themselves unable to deal with the new debt they have incurred. When they have nowhere else to turn, they sometimes turn to the safety valve of bankruptcy.

Older Americans are also more frequent victims of predatory lending

practices. Sometimes, bankruptcy is the most viable avenue for an elderly person to address the financial consequences of being victimized by unscrupulous lenders. It is unfortunate that Senator DURBIN's amendment to address that problem was defeated last week.

Studies of the problems facing older Americans tell us the same sad story. In one study, one in ten older Americans reported that they filed for bankruptcy after unsuccessfully attempting to negotiate with their creditors. In some cases, their creditors threatened them with seizure of property, or placed harassing collection calls. Some of these senior citizens explained that they have been the victims of credit scams, and they were seeking relief in the bankruptcy courts.

For example, a 70-year-old woman filed for bankruptcy after her son discovered that she has allowed herself to become involved in a number of dubious financial transactions, including buying more than six different expensive and duplicative life insurance policies and spending several thousand dollars on sweepstakes contests. At the time of her bankruptcy, she had mortgaged her previously mortgage-free home for more than \$74,000 to try and pay off her debts. She was in danger of losing the home she shared with her husband who was in failing health.

The bottom line is that bankruptcy shouldn't be made more difficult for those who are depending on Social Security for their livelihood.

Social Security was developed to ensure that seniors can live their golden years in dignity. If we allow Social Security income to be considered while determining whether someone is eligible for bankruptcy, a portion of those benefits could be used in a manner inconsistent with Congress' intent.

Some of my colleagues oppose this amendment because they argue that wealthy seniors would be the beneficiaries. But, practically speaking, wealthy debtors rarely use Chapter 7—they're more likely to file under Chapter 11 of the bankruptcy code.

For very high income individuals, like Ross Perot, social security represents a very small percentage of their total income. Indeed, the maximum social security retirement benefit for a new 65-year-old retiree in 1997 was \$16,000. For the Ross Perot in this country, \$16,000 is a rounding error. His income is so high that including or excluding \$6,000 changes his income by only a tiny percentage. But for the poor widow who gets 90 percent of her income from social security it makes a big difference.

Rich debtors who file in Chapter 7 would be caught by the means test, whether or not the courts include Social Security income as part of the debtor's "current monthly income."

It is important to realize that even though we do tax individuals on higher Social Security, 75 percent of our seniors pay no tax on Social Security because they are below \$25,000 in income.

this is the group about which we are talking.

For two-thirds of American seniors, Social Security income represents more than 50 percent of their total income, and for 42 percent of seniors, it represents three-quarters of their total income. That is basically what we are talking about. We will hear: We can't accept this because it will create some loophole for our seniors.

We have to realize that for 42 percent of all seniors, Social Security represents three-quarters of their total income. Furthermore, 95 percent of all workers never reach the maximum Social Security benefit. That means only 5 percent of workers earn more than \$72,000, and the average person is well below that income level. The myth of the wealthy senior using this amendment to avoid their obligations is just that—it is a myth.

The purpose of Social Security is to guarantee there is a financial foundation provided for all senior citizens to ensure their basic needs—food, shelter, clothing, and medicines—are met. For two-thirds of senior citizens, Social Security provides more than half of their income, and Social Security benefits are hardly enough, in many cases, to meet these basic needs of seniors. Certainly, they cannot survive on less.

If we are serious about providing financial security and personal dignity for the elderly, we must protect their Social Security benefits from claims in bankruptcy. Otherwise, we run the risk of vulnerable senior citizens being left with virtually nothing. In many cases, these are the people who are not healthy enough to return to work, who certainly lack the physical stamina to work the extra hours or get a second job. Social Security benefits are all they have—all they ever will have—and these few dollars are essential to their financial survival. There is a higher concern here than recovering every last dollar for creditors. It is guaranteeing the elderly some measure of financial security in their declining years.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I appreciate very much the amendment offered by the Senator from Massachusetts. Also, for the benefit of everyone in the Chamber and within the sound of my voice, on this bill we have moved along significantly from 300-plus amendments down to fewer than 10 amendments.

I hope we can continue working on this bill. I do not see any reason why we cannot finish this legislation tonight. We have a few amendments. I have heard it being rumored that we are going out early tonight. If the majority wants a bankruptcy bill, they can have a bankruptcy bill. The minority is not holding up the bankruptcy bill. We have, as I indicated, fewer than 10 amendments. A number of those Senators have agreed to time limits.

It is a situation where, with all the work that has been done for years by the manager of the bill—not a matter of weeks but for years—the goal is in sight, and we should move forward and pass this much-needed legislation. I repeat, the problem is not with the minority. We are willing to work as late tonight as possible. We were willing to work yesterday. I hope we can move forward on these amendments.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I come to the floor for a moment to commend both Senator GRASSLEY, the manager on the Republican side, and our very distinguished assistant Democratic leader. We started the consideration of this bill several days ago. As I understand it, 20 amendments were filed. We are now down to fewer than 10 amendments.

As I understand it, there is a potential time agreement on virtually every amendment. Virtually every Senator has expressed their interest in bringing this bill to a conclusion and are prepared to accept time limits.

I further understand the majority is giving some consideration now to going out early tonight after we have had a couple votes. I hope that isn't the case because I would like to see if we could finish this bill either tonight or tomorrow. There is no reason why we cannot finish it and move on to other matters. There are a number of other matters pending.

So I speak for a lot of our colleagues in expressing our gratitude to the distinguished assistant Democratic leader for his effort yet again. He has done this on so many bills, but on this bill in particular he has really done an extraordinary job of not only working to accommodate Senators but also to manage the legislation on our side, along with Senators LEAHY and TORRICELLI, and, of course, the chairman of the subcommittee, Senator GRASSLEY, for his work in working with Senators who wish to offer amendments.

I know some of these amendments have been accepted, and some of these amendments will require rollcalls. The point is, let's get the work done. Let's finish either tonight or tomorrow, but let's finish the bill.

There was a time when I feared we would not finish this legislation this year. Maybe that is the only silver lining for those of us who would like to bring this matter to closure: That we will have the opportunity to finish this legislation.

Many members still have amendments. Some of these amendments that are yet to be offered may tell the story

with regard to Democratic support. There are some good amendments that are still pending. Senator KENNEDY has a very good amendment that needs to be addressed. I hope we can do that and move on the other Democratic amendments that I know Senator SCHUMER and others have indicated they are prepared to offer.

So we are getting down now to the final few amendments. I hope we will just keep the heat on, and finish up this critical legislation many of us have worked so long and so hard to enact.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I have two unanimous consent requests.

AMENDMENT NO. 2659, AS MODIFIED

Mr. GRASSLEY. Mr. President, the first unanimous consent is on an amendment, as modified. It is amendment No. 2659. I send the modification to the desk and ask unanimous consent it be considered agreed to, and the motion to reconsider be laid upon the table.

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

The amendment (No. 2659), as modified, was agreed to, as follows:

On page 18, line 5 insert "(including a briefing conducted by telephone or on the Internet)" after "briefing".

On page 19, line 15, strike "petition" and insert "petition, except that the count, for cause, may order an additional 15 days."

Mr. GRASSLEY. Mr. President, I ask unanimous consent that at 4:30 we proceed to two stacked votes on the pending Feinstein amendment and the Schumer amendment, and do it in that order, with 4 minutes equally divided in the usual form between the two votes, and that no amendments be in order prior to the votes. Maybe I ought to correct this. I think we should say there would be 2 minutes divided on the Feinstein amendment and then 2 minutes before we vote on the Schumer amendment—or 4.

Mr. DASCHLE. Reserving the right to object, I want to be sure. Is it amendment No. 2761? Is that the Schumer amendment referred to by the Senator from Iowa?

Mr. GRASSLEY. Amendment No. 2762.

Mr. DASCHLE. Amendment No. 2762. Mr. GRASSLEY. So let me once again state this: I ask unanimous consent that at 4:30 we proceed to two stacked votes on the pending Feinstein amendment, with 4 minutes equally divided to discuss the Feinstein amendment, and then at the end of that vote have 4 minutes equally divided to discuss the Schumer amendment, and then immediately proceed to a vote on or in relation to the Schumer amendment, and that no amendments be in order prior to the votes.

Mr. REID. Reserving the right to object, could I ask the manager of the bill about why we can't vote on amendment No. 2761, also a Schumer amendment?

Mr. GRASSLEY. Which amendment is that?

Mr. REID. The Schumer-Santorum amendment.

Mr. GRASSLEY. We have an objection from the Banking Committee on that one at this point. And also, for the benefit of Senator KENNEDY, who has been very patient, I have one Senator I have to consult before we go to a final decision on that amendment. But I think we can take care of this when we are over here voting, if you would let us proceed to these. And then I will work with you to get to the bottom of that at the time of that vote. Is that OK?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. 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.

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

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

Mrs. FEINSTEIN. Mr. President, to sum up my amendment, what this bankruptcy bill is all about is encouraging debtor responsibility—in other words, to the extent that an individual possibly can, they should repay their debt. That is one side of it.

I think to the extent the credit industry can be responsible, you need to have a balance between the two. Right now, there is not a balance between the two. I think we all know of people who have a number of credit cards who do not have the income even to pay back the minimum debt or the minimum monthly payment plus interest over a period of time.

Let me give an example. If you have a \$1,500 debt and your minimum monthly payment is \$25 and you have no late fees, no new purchases, at 19.8-percent interest, it takes 282 months to pay that debt off. I know people in this situation who shouldn't have credit cards, who should have been checked out, who have six, who are going into bankruptcy because they didn't understand this simple concept.

What the amendment before you would do is ask the Federal Reserve to do a study of lending practices in this area and make public their findings, and also have the ability to set new regulations if they believe those regulations are warranted.

This amendment was passed a year ago by a voice vote. It was removed in conference. The amendment would be accepted. My concern is that it would again be deleted in conference. Therefore, I have asked for the yeas and nays. I am hopeful this Senate will go on record as supporting this study by the Federal Reserve.

I thank the Chair and yield the floor.

Mr. GRASSLEY. Mr. President, I yield back the remainder of the time we have on this side.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to amendment No. 2756. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

Mr. NICKLES. I announce that the Senator from Arizona (Mr. McCAIN), is necessarily absent.

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

The result was announced—yeas 82, nays 16, as follows:

[Rollcall Vote No. 368 Leg.]

YEAS—82

Abraham	Feingold	McConnell
Akaka	Feinstein	Mikulski
Baucus	Frist	Moynihan
Bayh	Gorton	Murkowski
Bennett	Graham	Murray
Biden	Grams	Nickles
Bingaman	Grassley	Reed
Bond	Gregg	Reid
Boxer	Harkin	Robb
Breaux	Hatch	Roberts
Bryan	Helms	Rockefeller
Burns	Hollings	Roth
Byrd	Hutchison	Santorum
Campbell	Inouye	Sarbanes
Chafee, L.	Jeffords	Schumer
Cleland	Johnson	Sessions
Cochran	Kennedy	Shelby
Collins	Kerrey	Smith (OR)
Conrad	Kerry	Snowe
Craig	Kohl	Stevens
Crapo	Kyl	Thurmond
Daschle	Landrieu	Torricelli
DeWine	Lautenberg	Voinovich
Dodd	Leahy	Warner
Domenici	Levin	Wellstone
Dorgan	Lieberman	Wyden
Durbin	Lincoln	
Edwards	Lugar	

NAYS—16

Allard	Gramm	Smith (NH)
Ashcroft	Hagel	Specter
Brownback	Hutchinson	Thomas
Bunning	Inhofe	Thompson
Coverdell	Lott	
Enzi	Mack	

ANSWERED "PRESENT"—1

Fitzgerald

NOT VOTING—1

McCain

The amendment (No. 2756) was agreed to.

Mr. LEAHY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, 4 minutes are now evenly divided on the Schumer amendment No. 2716.

Mr. GRASSLEY. I suggest the absence of a quorum because we can work something out and maybe avoid a vote.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2652

Mr. GRASSLEY. I wish to make it clear, what I am going to ask unanimous consent on now is unrelated to what we are trying to work out on the Schumer amendment.

Mr. President, the managers have agreed to accept Senator KENNEDY's amendment, so I ask unanimous consent that amendment No. 2652 be accepted.

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

The amendment (No. 2652) was agreed to.

Mr. LEAHY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mr. ENZI). 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 ask unanimous consent that we proceed, then, to 2 minutes of debate on that side, 2 minutes on this side, and then we go to a vote.

The PRESIDING OFFICER. That is the regular order. Who yields time?

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the yeas and nays be voted on the amendment.

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

Mr. GRASSLEY. 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.

Mr. GRASSLEY. Mr. President, there will be no more rollcalls today. We hope to continue debating some amendments, and they will be stacked to be taken at a time determined by the leader tomorrow.

Mr. LEAHY. Mr. President, again, I reiterate what I said before: The Senator from Iowa and I, the Senator from New Jersey, Mr. TORRICELLI, and Senator HATCH have all been working very hard. We have gone from 300 some odd amendments down to only a half dozen or so remaining. I will continue to work with my friend from Iowa to try to clear whatever we can.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that any votes ordered today be stacked for a time to be determined by the leader.

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

Mr. LEAHY. Mr. President, I know my good friend from Alabama is here

as manager on his side. I know we have no further rollcalls on this. I see my friend from Wisconsin on the floor. I am wondering if we can get some of the debate out of the way, and I wonder if we might yield to the Senator from Wisconsin and let him begin debate on his amendment.

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

Mr. LEAHY. Yes.

Mr. REID. I say to my friend from Vermont that in looking over these amendments, which have gone from 320 to now probably 7 or 8, a handful of amendments, the Senator understands that the movement of this bankruptcy bill is not being slowed down on this side of the aisle. Our Members have been very cooperative. Would he agree to that?

Mr. LEAHY. Yes. The Senator from Nevada has cleared out an awful lot of them. I think we have cleared 300-some-odd down to half a dozen or so. We could, for example, vote tonight without further debate on the Schumer-Santorum amendment, No. 2761. We could stagger them in the morning. I came in at 10 yesterday morning to be prepared to manage the bill on this side, and, for whatever reason, we stayed in morning business until 4 in the afternoon. What I am trying to do here—and I know the Senator from Alabama is on the floor, too—if there are things we can take care of on the bill tonight, let's do it.

Mr. REID. If the Senator will yield, Senator WELLSTONE has two amendments he will offer first thing in the morning. Senator FEINGOLD has one amendment that has already been offered. He wants to debate it some more, and he said he would do that tonight. We also have Senator FEINGOLD who has one other amendment he wishes to offer at a subsequent time. We also have a Dodd amendment that, I think with the managers' bill, we have worked out, and it has been agreed to by the chairman of the Judiciary Committee and the manager. Senator SARBANES has an amendment he wishes to offer. Senator HARKIN has an amendment he said he may offer tonight. We are basically finished.

The two things that are holding this up—and we should not play around with it anymore—are an amendment by the Senator from New York dealing with clinics, on which he has agreed to a half-hour time limit, and we have the Senator from Michigan, Mr. LEVIN, who has agreed to 17 minutes on an amendment relating to gun manufacturers.

I say to my friend, in short, we have almost nothing left. So it would seem to me we should move forward as rapidly as possible and finish this bill.

Mr. SESSIONS. Mr. President, on the order, I think it would be appropriate for Senator FEINGOLD to proceed at this time. Further, I think we will proceed without unanimous consent after that. Senator GRASSLEY will be back, and we can decide what to do then.

I yield the floor.

PRIVILEGE OF THE FLOOR

Mr. INHOFE. Mr. President, I ask unanimous consent that Paul Barger have the privilege of the floor for this day.

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

AMENDMENT NO. 2748

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I call for the regular order with respect to amendment No. 2748.

I wish to speak on the landlord-tenant amendment I offered last week and, in particular, take a few minutes to respond to some of the arguments made against it by the Senator from Alabama. This amendment is designed to lessen the harsh consequences of section 311 of the bill with respect to tenants while at the same time protecting the legitimate financial interests of landlords.

Just to review, current law provides for an automatic stay of eviction proceedings upon the filing of a bankruptcy case. Landlords may apply for relief at that stage so the eviction can proceed. But it is a process that often takes a few months.

Section 311 of Senate bill 625, the bill we are considering, eliminates the stay in all landlord-tenant cases so that an eviction can proceed immediately. In essence, my amendment would allow tenants to remain in their apartments while trying to sort out the difficult consequences of bankruptcy if, and only if, they are willing to pay the rent that comes due after they file for bankruptcy. If the tenant fails to pay the rent, the stay can be lifted 15 days after the landlord provides notice to the court that the rent has not been paid. If the reason for eviction is drug use or property damage, the stay can also be lifted after 15 days.

Finally, if the lease has actually expired by its terms—in other words, if there is no more time on the lease and the landlord plans to move into the property—then, again, after 15 days notice the eviction can proceed. This 15-day notice period does not apply if the tenant has filed for bankruptcy previously. In other words, in cases of repeat filings, the stay never takes effect, just as under section 311 in this bill.

So we are all clear on why this whole issue came up in the first place, the main abuse that has been alleged is in Los Angeles County, where unscrupulous bankruptcy petition preparers advertise filing bankruptcy as a way to live rent free. Under my amendment, first of all, you could never live rent free. The debtor must pay rent after filing for bankruptcy. If the debtor misses a rent payment, the stay will be lifted 15 days later. Second of all, the automatic stay does not take effect if the tenant is a repeat filer. So we take care of this problem of the repeat filer, which is exactly what the Senator from

Alabama and others portrayed in committee as the reason this provision is needed.

So my amendment gets at the abuse, and it protects the rights and economic interests of the landlord. What it eliminates, though, is the punitive aspect of this amendment and the possibility that tenants who are willing and able to pay rent once they get a little breathing room from their other creditors will instead be put out on the street.

I am, frankly, disappointed that my colleague from Alabama insists on the harsh aspects of section 311 when my amendment would get at the problem he has identified just as well.

The Senator from Alabama argued yesterday that somehow my amendment changes current law and moves us in the direction of litigation and delay. On the contrary, my amendment leaves intact the current law that allows landlords to get relief from the automatic stay. Let me be very clear about that. My amendment does not eliminate the ability of landlords to apply for relief from the stay under current law. The law now gives debtors some breathing room in legal proceedings, including eviction proceedings. But landlords can apply for relief from the stay. It is not an abuse of the law to take advantage of the automatic stay to get your affairs in order. Some tenants use that time to work out a payment schedule for their back rent so they can avoid eviction. Most landlords don't want to throw people out on the street. They just want to be paid. My amendment requires that they be paid once bankruptcy is filed, or the eviction can proceed immediately. But even if the rent is paid while the bankruptcy case is pending, if a landlord can still seek relief from stay under the normal procedures and press forward with the eviction.

I frankly think that most landlords will be happy to let a tenant stay as long as the rent is being paid. Who knows, if the bankruptcy is successful, especially if it is a Chapter 13, the tenant may be able to pay the past due rent. That certainly is not going to happen if the tenant is evicted. But if the landlord really doesn't want the tenant to stay, the landlord can seek relief. So my amendment doesn't allow a tenant to stay in the apartment indefinitely by resuming payment of rent. By no means does this amendment permit a tenant to stay in an apartment indefinitely without a lease.

And any suggestion to the contrary is just wrong. It doesn't do that at all. It just covers the few months after the bankruptcy petition is filed when the debtor is most vulnerable and the debtor is most in need of a roof over his or her head.

Now let me address one of the frequent refrains of the Senator from Alabama when he talks about this provision. He seems to be very offended by the idea that people are staying in

their apartments after the term of their lease has expired. Those who are familiar with landlord-tenant law know that this is commonplace in the rental market. Many, many leases are for a term of one year but convert to a month to month lease when the year is up. The contract essentially remains in force, but the term has expired. There is nothing wrong with that. It is perfectly legitimate. Typically, the conversion to month-to-month tenancy is provided for in standard lease language.

This is not an abuse. It is the way many leases proceed in this country on a day-to-day basis.

Furthermore, the language of section 311 doesn't lift the stay when the term of a lease has expired but rather in cases where "a rental agreement has terminated under the lease agreement or applicable state law." Well, most rental agreements "terminate" when a rent payment is missed. So section 311 applies in all landlord-tenant cases, not just those where the lease term has expired.

I want to remind my colleagues that both the bill we passed last year, and the conference report had a form of the protection that my amendment provides for debtors. Section 311 of the bill that we are working on now is harsher on tenant debtor than the conference report from last year and than the House bill that passed earlier this year.

Now let me respond to what I think is the core of Senator SESSIONS' objection to my amendment. He said last week that the automatic stay is always lifted, that the tenant never wins. So why not just get rid of the stay. It's just a waste of time and money for the landlord.

Mr. President, I have a letter here from a debtor's attorney named Henry Sommer. Mr. Sommer is an expert in consumer bankruptcy cases. He is the author of the widely used treatise *Consumer Bankruptcy Law and Practice*, which is published by the National Consumer Law Center. He indicates in his letter that has represented thousands of low-income consumer debtors over the past 25 years. I ask unanimous consent that Mr. Sommer's letter be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. FEINGOLD. Mr. President, Mr. Sommers heard the remarks of the Senator from Alabama last week in opposition to my amendment. He writes:

The statement was made that landlords always prevail in automatic stay motions. This is not correct. In my personal experience, I doubt that landlords have prevailed in even 20% of the cases. In most of the other cases, the family paid the rent and the motion was either withdrawn or denied.

Mr. Sommers goes on to state:

The more important point is that in most cases no motion is brought by the landlord. The automatic stay does what it is intended to do. In these cases, the family that was facing eviction cures the rent arrears and re-

mains in its apartment. The landlord is made whole, and the family is permitted the time necessary to reorganize its finances.

Mr. Sommers also discusses my amendment.

To the extent there are abuses in the current system, your amendment will provide prompt and efficient relief by giving landlords a streamlined procedure that could be pursued quickly and without an attorney.

That's a crucial point, Mr. President, because one of the concerns expressed by the Senator from Alabama is the expense and inconvenience of the relief from stay process for landlords under current law. Mr. Sommers concludes:

Your amendment would make it impossible to obtain significant delay simply by filing a bankruptcy petition, as can occur today. But it would not hurt the innocent family, struggling to get its finances together, that is able to begin making rent payments and cure its rent default.

That is really the crucial point Mr. President. We are talking about real people here. People who are very vulnerable. The Senator from Alabama argued yesterday that a landlord may have another tenant lined up to move into an apartment. And he said that if my amendment were adopted, and I'm quoting here, "that tenant's life may be disrupted if the landlord can't deliver the premises." Well, Mr. President, what about the life of the current tenant, very possibly a single mother with children? For months she's been trying to make ends meet, but the child support she is owned by her ex-husband has not been coming. She misses a few rent payments as she tries to make sure her children are fed and their home is heated. The landlord starts eviction proceedings. And she is forced to file for bankruptcy.

Now once the bankruptcy is filed, and her other creditors are temporarily at bay, she can pay her rent. On time and in full. What about disruption to her life if we put her and her children out on the street? Do we not care about that? If the landlord is not economically harmed, why wouldn't we allow her to stay in her apartment for a few months more? Why can't we maintain the breathing room that the automatic stay under current law provides? What is so terrible about that?

Mr. President, this is the situation I am concerned about. I want to respond in a reasonable way to the abuses that section 311 is supposedly designed to address. But I don't want to cause undue hardship to people who are able to pay their rent while their bankruptcy case is pending.

In the spirit of compromise, I have proposed a few other changes to the amendment to the Senator from Alabama, in response to some of the concerns he and his staff have raised. We are trying to listen very carefully to the points that the Senator from Alabama is making. First, I am willing to have the stay lifted not only in cases where the lease has expired and the landlord wants to move into the property, but also in cases where the landlord wants to let a member of his or

her immediate family to occupy the premises. I will expand the language in my amendment to cover that situation.

I will also expand the language to cover a situation where the lease has expired and the landlord has entered into a signed and enforceable agreement with another tenant before the bankruptcy petition is filed. That is the situation that the Senator from Alabama has suggested creates an unbearable hardship for the new tenant. So if a new lease has been made before the debtor files for bankruptcy, the landlord can apply for expedited relief from the stay.

Finally, Mr. President, it has been suggested that some debtors will try to game the system by filing for bankruptcy the day after a rent payment is due, thus giving themselves almost a free month in the apartment before my amendment would apply. I am willing to try to stop this kind of abuse by requiring debtors to pay any rent that comes due up to 10 days before the filing of the petition.

Mr. President, I am trying to be reasonable. I am going to make these changes in a second degree amendment and I hope the Senator from Alabama will accept the amendment. I want my colleagues to understand that this amendment is designed to address the abuses that the Senator from Alabama has identified, but do it in a much more reasonable way, so that we can protect some very vulnerable people from being thrown out on the streets at a very difficult time in their lives.

AMENDMENT NO. 2779 TO AMENDMENT NO. 2748

Mr. FEINGOLD. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative assistant read as follows:

The Senator from Wisconsin (Mr. FEINGOLD) proposes an amendment numbered 2779 to amendment No. 2748.

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

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

The amendment is as follows:

On page 1, line 5, strike all after "(23)" and insert the following:

under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property—

"(A) on which the debtor resides as a tenant under a rental agreement; and

"(B) with respect to which—

"(i) the debtor fails to make a rent payment that initially becomes due under the rental agreement or applicable State law after the date of filing of the petition or within the 10 days prior to the filing of the petition, if the lessor files with the court a certification that the debtor has not made a payment for rent and serves a copy of the certification to the debtor; or

"(ii) the debtor's lease has expired according to its terms and (a) the lessor or a member of the lessor's immediate family intends to personally occupy that property, or (b)

the lessor has entered into an enforceable lease agreement with another tenant prior to the filing of the petition, if the lessor files with the court a certification of such facts and serves a copy of the certification to the debtor;

“(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property, if during the 1-year period preceding the filing of the petition, the debtor—

“(A) commenced another case under this title; and

“(B) failed to make a rent payment that initially became due under an applicable rental agreement or State law after the date of filing of the petition for that other case; or

“(25) under subsection (a)(3), of an eviction action based on endangerment of property or the use of an illegal drug, if the lessor files with the court a certification that the debtor has endangered property or used an illegal drug and serves a copy of the certification to the debtor.”; and

(4) by adding at the end of the flush material at the end of the subsection the following: “With respect to the applicability of paragraph (23) or (25) to a debtor with respect to the commencement or continuation of a proceeding described in that paragraph, the exception to the automatic stay shall become effective on the 15th day after the lessor meets the filing and notification requirements under that paragraph, unless the debtor takes such action as may be necessary to address the subject of the certification or the court orders that the exception to the automatic stay shall not become effective or provides for a later date of applicability.”.

Mr. FEINGOLD. Mr. President, this second-degree amendment incorporates the modifications I just described. I hope it will be acceptable to the managers of the bill. I have actually shared these ideas and changes with the managers and with the Senator from Alabama.

If not, I urge my colleagues to support it.

I yield the floor.

Exhibit I

LAW OFFICES,

MILLER, FRANK & MILLER,

Philadelphia, PA, November 10, 1999.

Senator RUSS FEINGOLD,  
Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR FEINGOLD: I listened to some of the debate concerning your amendment that would moderate some of the landlord-tenant provisions of S. 625. I am writing to let you know that some of the statements made in opposition to your amendment are not in my experience accurate. (I have represented thousands of low-income consumer debtors over the last 25 years and also spend time educating and consulting with other bankruptcy lawyers around the country.)

The statement was made that landlords always prevail in automatic stay motions. This is not correct. In my personal experience, I doubt that landlords have prevailed in even 20% of the cases. In most of the other cases, the family paid the rent due and the motion was either withdrawn or denied.

Overall, more than 20% of landlord stay motions probably are granted, because no one denies that in a few cities there have been widespread abuses (spurred by non-attorney petition preparers, not by attorneys) and when landlords have gone to court they have prevailed in almost all such cases. However, even in these places the problem

was being solved even without legislation. I noticed that the figures given for Los Angeles county (where the abuses were worst) were from 1996. It is my understanding that changes in state law and in bankruptcy court procedures have significantly reduced the abuses since then.

The more important point is that in most cases, no motion is brought by the landlord. The automatic stay does what it is intended to do. In these cases, the family that was facing eviction cures the rent arrears and remains in its apartment. The landlord is made whole, and the family is permitted the time necessary to reorganize its finances. Thus, even if it is true that in most cases where landlords seek relief from the stay, such relief is granted (no data is actually kept on the results of such motions), in the large majority of bankruptcy cases tenants catch up on their rent arrears, the landlord is satisfied, no motion for relief from the stay is brought, and the family remains in its home.

To the extent there are abuses in the current system, your amendment will provide prompt and efficient relief by giving landlords a streamlined procedure that could be pursued quickly and without an attorney. Your amendment would make it impossible to obtain any significant delay simply by filing a bankruptcy petition, as can occur today. But it would not hurt the innocent family, struggling to get its finances together, that is able to begin making rent payments and cure its rent default.

Please contact me if you need further information about tenants in bankruptcy.

Very truly yours,

HENRY J. SOMMER.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the work of the Senator from Wisconsin. I know he cares deeply about this issue. He has made some changes in the previous amendment that make the bill more palatable. However, it still runs afoul of common sense and efficient operation of the bankruptcy system. Furthermore, it will allow abuse of the system in a way that is unjustified and unprecedented in terms of any other creditor of a person who goes into bankruptcy.

We are asking a landlord for certain periods of time to extend free rent, when the grocer is not required to give free groceries and the gas station is not required to give free gas.

Let me make a few points about this matter. It is a subject of great abuse in the United States. That is why we are here. The bankruptcy law was last amended in any significant fashion in 1978. Since that time, we have found that a large bankruptcy bar has developed. This has been very good in many ways, but also this skilled, experienced and specialized bar has learned how to utilize the Federal bankruptcy laws to maximize benefits for their clients, as they believe it is their duty to do. In the process, they have created abuses of innocent creditors and landlords, among others.

That is not what we are about. Our responsibility, as a Congress, is not to blame the lawyers, is not to blame the tenants who take advantage of these things. The responsibility of Congress

is to pass laws that are not easily abused and that end in just results.

One of the most abused sections of the bankruptcy law has been the landlord-tenant situation. First, eviction procedures are set forth in the laws of all 50 States. One cannot simply throw somebody out of their apartment. One has to file an eviction notice, go to the State court, prove the case, and eventually get the tenant out. Many believe that process is far too prolonged and far too costly. That is what the law is. In many instances, it is good because it provides tenants opportunities to get their affairs together.

With the current bankruptcy law, tenants have responded to ads in newspapers and fliers passed out in neighborhoods and throughout the communities. Those ads say: Up to 7 months free rent. Call us; we will take care of you. We guarantee you 2 to 7 months of delays in payment of your rent and guarantee you will not be evicted under those circumstances.

How can that happen? Say a person is behind in his rent and also behind in other payments, and people have filed lawsuits against him, and he or she has gone to the lawyer to ask what to do, and the lawyer files for bankruptcy. Maybe the lease the person had with the landlord has already expired. Maybe it requires him to pay his rent monthly, and it has been 4 or 5 months since the rent has been paid, and the landlord has already commenced eviction actions against the tenant. When that happens, the matter normally goes forward in State court.

Under normal State laws for removal of someone who does not pay their rent, when a bankruptcy court is involved, the eviction case is stayed; an automatic stay is issued. The landlord cannot proceed with that eviction until the stay is lifted in the bankruptcy court. Once that happens, the landlord can go back to State court and continue with his lawful eviction actions.

This has caused quite a bit of gaming of the system. For example, I will share with Members some statistics from California. The Los Angeles County Sheriffs Department estimates that 3,886 residents filed for bankruptcy in 1996 simply to prevent the execution of valid court-ordered evictions. The sheriff has the responsibility of actually evicting the tenant. The Sheriffs Department of Los Angeles said these 3,886 bankruptcy petitions represent over 7 percent of all the eviction cases handled by the department and that losses have been estimated at nearly \$6 million per year in that county. Some people routinely flaunt that automatic stay provision—lawyers do—that advertises that persons may live rent free by filing bankruptcy.

One bankruptcy flier sent out said for a fee the lawyers will use more moves than Magic Johnson to prolong the eviction process.

This is not good. A judge in California has dealt with this matter over and over again, and in an opinion, this

is what Judge Zurzolo in the Central District of California had to say about the evictions and how he believes how meritless they are. This is from his written opinion:

... the bankruptcy courts . . . are flooded with chapter 7 and chapter 13 cases filed solely for the purpose of delaying unlawful detainer evictions. Inevitably and swiftly following this in bankruptcy court, the filing of these cases, is the filing of a motion for relief of stay by the landlord.

After the bankruptcy is filed and the eviction notice is stopped, the landlord has to go into bankruptcy court with his lawyer and file for relief from stay and say: Look, I have not been paid rent for many months; the tenant is in violation of the lease; there is no asset of which the bankruptcy court has jurisdiction. Bankruptcy judge, allow me to proceed with my eviction.

Or the landlord will say: The lease has expired. The tenant has been here a year. In month 14, the lease expired. He did not extend the lease. I want to remove him.

This is what the judge continues to say in his opinion:

These relief from stay motions are rarely contested and are never lost. Bankruptcy courts in our district hear dozens of these stay motions weekly, none of which involves any justiciable controversies of fact or law.

I don't know about the individual who says he represented a lot of cases and said he won some of the motions, but I don't believe they ought to be winning them under the law if the lease has expired, and that is what our amendment says. If the lease has expired, there cannot be an asset of the bankruptcy estate, and if there is no asset for the bankruptcy court to take jurisdiction over, it has no ability to issue any stay orders to protect or stop any litigation that is ongoing.

That couldn't be the case. If the lease is behind and the payments have been so far delayed that the lease has been violated and, likewise, the tenant has no property interests, there is no asset before the bankruptcy court over which the bankruptcy court has jurisdiction. The bankruptcy court essentially has jurisdiction only over the assets, to make sure when a person cannot pay his debts, all the assets are brought into the pot and the people who should receive the money from the estate get it in proper order.

We are talking about monumental abuse. This is a loophole that has been expanded over and over again. We are seeing record numbers of filings. Many people are filing bankruptcy solely for this protection.

Senator FEINGOLD's amendment, which he has worked hard to improve, is better than before, but is still unacceptable and still creates an unjust situation. For example, if a debtor owes rent and files for bankruptcy, he can wait until after his rent is due and then file it and have 15 days before his first rent payment is due. Then he could make that payment and not make any more payments and remain

on this property—maybe even when the lease has expired he can stay there—and not pay the next month's rent.

This is the problem I have been talking about. He has 2, 3, 4 months now. His lawyer is advising him how to do this. His lawyer is going to advise him, first of all: Pay me. Pay your lawyer and do not pay your other debts until you have to. The debtor will do that. Then the landlord has to get a lawyer to file a certificate of failure to pay rent, and once that has been approved by the court, after a further delay of 15 days, then he has to go back to State court, now months behind schedule, and pick up again his legitimate eviction notice.

Bankruptcy court ought not be for that purpose. If the people of the United States want to provide individuals without assets a place to live, then we ought to do so. In fact, we do that. We have low-rent housing for people with low income or rent-free housing for people who cannot afford it. We have benefits for people who do not have housing. But why should an American citizen, a landlord, be required to provide to a tenant, who has violated his lease, an asset rent free that we in the U.S. Congress are not willing to fund? If it is so easy and it costs so little, why don't we pay for it? Why don't we tax American people to pay for other people's rent? We are doing that to a degree right now.

I do not believe that is a legitimate approach to the matter. It is not common sense. It is not what American law is about. When you are in a Federal court, in a bankruptcy court, or a State court, if you have a lease, that is a contract, and if you violate that lease, then you lose the benefit of the contract.

This is so basic and fundamental that I do not know how we in this Congress can think we can pass a law that makes American citizens responsible for someone to have a place to live when they are not paying for it.

We have a number of different provisions in State law that allow tenants rights to hold on and refinance and maybe keep the place in which they live. That is all right. I want to continue that. If people want to change that, go to your State court, change your eviction laws in your State, and take it to your State legislature.

Let's not make the bankruptcy law become a policy of social engineering to decide who should get special benefits and who should pay for those benefits. In effect, it is a tax. The landlord who loses this money is a person who is taxed. Indeed, we may have landlords going bankrupt if tenants do not pay rent.

Two-thirds of rental residences in America today are four units or less. That means we have an awful large number of our grandparents and brothers-in-law who may have a duplex or garage apartment and are renting them to people, and all of a sudden, somebody does not pay. They cannot get the

tenants out. The landlords are not receiving any money. Two, 3 months go by, and finally the landlord files for eviction. Boom, the tenant files for bankruptcy. Then, the landlord has to hire a lawyer to go to bankruptcy court, and that is another 2, 3 extra months delay. The landlord is without rent for 2, 3 months, and they still do not have their property back.

This is an abuse of bankruptcy law, and this legislation is designed to fix it. This bill does not change substantive landlord tenant law. Rather, it is a change in that if certain circumstances exist, the landlord does not have to hire a lawyer to go to Federal bankruptcy court to get relief.

It says there is an exemption from the automatic stay if the eviction proceeding was started prior to the filing of the bankruptcy. If the landlord had already filed for eviction before the individual files for bankruptcy, the eviction process can continue as it would have normally.

In addition, the bill says the automatic stay does not apply if an eviction proceeding was based on the fact that the lease had already been terminated. It was a year's lease, and you are in month 13, 14, 15, 16 and no payments have been received and the landlord wants to lease to another tenant. It is the landlord's property. The tenant has no property rights. His lease has expired, for heaven's sake.

I say to Senator FEINGOLD, I respect his concern for these matters. States do provide protections for persons who have difficulty paying their rent.

Also, many landlords all over America try to work with their tenants. They do not want to change tenants if they are happy with a tenant. If they can help work out the tenant's payments, for previous months, that is a courtesy extended by small landlords, two-thirds of whom have four units or less. Those courtesies can turn sour in a hurry if, after months of working with a tenant, the tenant becomes further and further behind in rent. Boom, a bankruptcy petition is filed; boom, they are stayed from eviction; months go by and the landlord has to hire a lawyer and great cost is incurred. This is an abuse of the system, and I must oppose this amendment.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am disappointed in the response of the Senator from Alabama. His comments to the effect that the only thing we should be considering is State laws having to do with leases and contracts almost suggests to me he does not believe there is any role for Federal bankruptcy law.

Bankruptcy law is contemplated in the U.S. Constitution. It certainly was not understood there would be no role at all for Federal bankruptcy law to have an impact on people's lives in our States, whether it be Alabama or Wisconsin. The automatic stay is an integral part of the federal bankruptcy

laws and its purpose is not just to protect the property of the estate but also to provide some breathing room for the debtor.

I will be the first to concede to the Senator from Alabama that one of the concerns in bankruptcy has to be making sure creditors get paid as much as possible and as efficiently as possible. That is legitimate. And a second important concern is to make sure people do not abuse the bankruptcy system.

But the concern the Senator from Alabama refuses to address, refuses to discuss, is that the bankruptcy law is supposed to help people get back on their feet. I will tell you that one lousy way to help people get back on their feet is to kick them out of their apartments, when it serves no financial interest of the landlord for that to happen.

The Senator from Alabama simply refuses to address the example I gave of a single woman with children, who is not getting her child support, who wants to and is prepared to pay her rent and is simply running into trouble and is ready to pay it again after she files for bankruptcy and has a stay against her other creditors. In the world that the Senator from Alabama portrays, this person loses out. This is deeply troubling to me.

What more can you do than listen to a colleague give hypothetical after hypothetical after hypothetical about what might be wrong with the amendment and try to specifically address those concerns? That is exactly what I have done in making the changes contained in my second degree amendment.

So, yes, efficiency in preventing abuses is an important principle. Let me review: The Senator from Alabama, both in committee and on the floor, has attempted to suggest that all kinds of abuses will still continue under the amendment that we have. The trouble is, the abuses he cites and the statistics he cites are all irrelevant to my amendment. My amendment will prevent the abuses.

He talks about the abuse of lawyers who do repeat filings, especially in Los Angeles County. We addressed that. Under our amendment, if you do multiple filings, you are out of luck; the stay is lifted automatically. Essentially, the provisions of the bill that the Senator from Alabama prefers apply in that situation.

In committee he argued against my amendment by saying: What happens if a landlord wants to move back into his own place? All right. We took care of that. We address that concern in the amendment. But then he says: What happens if his brother wants to move into the place? Well, we took care of that concern in this second degree amendment that I just offered.

Here is another example, because instead of admitting that we have actually dealt with some of these hypotheticals, he says: What happens if the landlord has a signed agreement for

a new lease prior to the filing of the bankruptcy? We addressed that concern too, but that still isn't good enough.

But I tell you what frustrates me the most. The Senator from Alabama keeps saying that people will live rent free. It is as if I have said nothing here on the floor at all. It is as if I have not said, time after time after time, that under my amendment a tenant cannot live rent free for 5 or 6 months, as the Senator has suggested. After filing for bankruptcy, if you do not pay your rent as it comes due, you are out of there under my amendment.

So what is all this talk about abuses, when in each and every hypothetical the Senator has proposed in committee or on the floor we have addressed his concern? We have addressed abuse. We have addressed the fact that the system has to be efficient.

But what has not been addressed and what this amendment is trying to deal with is what the Senator from Alabama simply ignores. He gives no hope; he gives no alternative to the person that I describe: the woman with children, who is not getting her child support, who is willing and able to pay her rent once she files for bankruptcy, but the Senator from Alabama would have her booted out of her apartment with her kids at the very moment when she is trying to get back on her feet.

So I urge the Senator from Alabama to actually review all of my attempts to try to address his concerns so that I can feel at least that this has been a process where he has raised concerns that he was worried about and we tried to deal with them. That is what we have been doing in debating and modifying this amendment.

I know on other issues we have been able to do that with the Senator, and I appreciate that. But I urge him, surely there has to be a better answer than just "tough luck" for these individuals who I have described, who are not in a position where they are going to abuse the system, who cannot get month after month of free rent living, because that is exactly what we dealt to prevent in the amendment. We have specifically dealt with the problem of a person who tries to get more than 1 month of rent free.

The whole problem with this overall bill is sort of symbolized by this debate. There needs to be some balance. I have recognized, in that spirit, the call of the Senator from Alabama for more efficiency, the call of the Senator from Alabama for preventing abuses. But where is the balance? Where is the recognition that there are human beings with limited resources who may need the opportunity to stay in that apartment and pay the rent after the bankruptcy is filed?

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I do thank the Senator from Wisconsin for accepting some changes because of my objections

to his last amendment. As I indicated earlier, I think he did respond to a number of those. But I also think he fairly clearly made the arguments I made a few minutes ago. I made those the last time his amendment came up also; and those were not addressed. They still remain a fundamental flaw.

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

Mr. SESSIONS. Yes.

Mr. FEINGOLD. What objection do you have?

Mr. SESSIONS. My concern is that there is fundamentally no legal basis for a stay in bankruptcy court of a lease that has expired or a lease that has been breached by lack of payment—since there is none, then the landlord ought not to have to hire a lawyer and go to bankruptcy court. So I continue to have that concern. But the Senator from Wisconsin has repeatedly said the tenant would be able to remain on the property, but only if they paid rent.

Let me give you a hypothetical.

On October 1, the tenant's rent is due. The tenant does not pay. On October 11, he files bankruptcy. On November 1, the rent is due; and it is not paid. On November 1, the landlord immediately files his notice in the bankruptcy court. And then 15 days are allowed to go by, presumably so the tenant could file some other complaint in bankruptcy court, some other delay or motion. And 15 days go by; and on November 16, the stay of the eviction proceedings is lifted. Then the landlord has to go back to the State court again to pursue his eviction notice, which has been stopped, which has probably fallen behind the 10,000 other cases in that State court system. And now the landlord has a hard time bringing it up.

So I would suggest to you, it is quite possible that the tenant could have 6 weeks rent free. I made the comment about "rent free" because I will show this advertisement right here in San Bernardino: "7 months free rent." That is what is being advertised in the paper:

No matter how far you are behind in your rent. We guarantee you can stay in your apt. or house for 2-7 months more without paying a penny!!! Find out how. We can stop the Sheriff or Marshall and get you more time.

Mr. FEINGOLD. Is the Senator aware that our amendment would prohibit what you are reading right there?

Mr. SESSIONS. It does not exactly, but it gives them at least a month and a half—if not 2 months, a month and a half.

Mr. FEINGOLD. Isn't it a fact—

Mr. SESSIONS. In addition, it still allows the abuse of forcing the landlord to go to two different courts to pursue a legitimate—

Mr. FEINGOLD. If I could follow up, under the scenario you described, isn't it true that you are talking about a maximum of 6 weeks, and not 6 months? Wouldn't you concede that?

Mr. SESSIONS. Under this scenario, it is clearly 6 weeks, if everything goes

perfectly for the landlord. It is guaranteed 6 weeks under these circumstances.

Mr. FEINGOLD. I would suggest to the Senator, you described the most egregious and extreme possibility under our amendment. And you were talking about 4 months, 5 months, 6 months. Not only is that not accurate, that is clearly not my intent.

My intent, as I have indicated time and again, is to try to make sure a person who is in this position has to pay that rent once they file for bankruptcy, and keep paying it or else they are out of luck. And the goal, just so it is clear to the Senator from Alabama, is obviously not to create that kind of scenario you described. If fact, you just made our case, that the maximum exposure there would probably be about 6 weeks, not 6 months, as you suggested.

Mr. SESSIONS. Mr. President, I believe I have the floor.

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

Mr. SESSIONS. Under most State eviction proceedings, a tenant who desires to stay on the property can maintain possession of that rental property 45 to 60 days. There are many rights and remedies for tenants. But at some point, the ability to stay without paying rent has to be ended. When you take that 45 to 60 days, and then file a bankruptcy petition, and then get another 6 weeks on top of that—and that is assuming everything goes smoothly, that the landlord can find a lawyer who will go to bankruptcy the first day he calls one, and who can get down there and file the proper petition or get his certificate filed. Maybe the landlord's lawyer does not understand how to file one of these certificates, and ends up billing him \$250 or \$300 for filing the darn thing, when, in fact, as the Senator, who is an excellent lawyer, knows, bankruptcy court has jurisdiction over property. It is the estate of the person who is filing. If there is no property, there is no estate, which is the case where the lease has expired, or the case where the lease has been breached by lack of payment. Then the bankruptcy court can't legitimately issue an order affecting that property. The bankruptcy judge can never issue an order under those circumstances. So why make somebody go to bankruptcy court to file these petitions if it will not do anything other than cost the landlord more money to delay the eviction and cost that person money?

If we in the Congress want to fund people who can't pay their rents and give them emergency funding, something like that, that is a matter to debate. I don't think we ought to tax private citizens to support individuals in this fashion when their contractual rights have been ended. We have to make sure our bankruptcy system is a good, tight, legal system and not a social service agency.

We give certain rights and benefits to debtors under bankruptcy law. We allow a person who has tremendous

debts to walk in and wipe out every one of those debts. Unless their income is above the median income and they can pay back at least 25 percent of their debts, they can go in bankruptcy court and never pay anybody they owe. They do not have to pay their garage mechanic who fixed their automobile for them, not their brother-in-law who loaned their family money when they needed it, not their mother, not their credit card company, not their bank, not their doctor, not their hospital, just wipe them all out because we believe people ought not be crushed under a weight of debt.

I do not believe we would expect the gas station to give free gasoline to somebody who has filed bankruptcy. I don't believe we would expect the grocery store to give free groceries to somebody who filed bankruptcy. Neither should somebody who has violated his lease, is subject to eviction under the appropriate State law, be given free rent, even for a month and a half, perhaps more. That is what our concern is.

I understand the Senator's great passion for this circumstance, but I believe this would be a step backward. It would allow an abuse to continue which we need to eliminate. I hope the Members of this body will reject the amendment.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I appreciate the comments of the Senator from Alabama. Frankly, this isn't really about a great passion on this issue. All I am trying to achieve is some balance. I do think landlords should be paid their rent. I do think it is terrible when people abuse the system.

But in case after case where the Senator from Alabama has presented an abuse, we have tried to address it. What it all came down to, when I asked him what he still objected to, was that he fundamentally doesn't believe in the principle behind the bankruptcy system, which is giving people an opportunity to get back on their feet and providing a little breathing room in the case of the type of person I described.

I described a single woman with children who is not getting her child support, who is in danger of being booted out of that apartment. When the Senator responds, he talks about the people who game the system, people who have different debts all over the place and who can hire sophisticated attorneys. That is not who we are talking about.

In fact, I refer back to Mr. Sommer's summary of what my amendment would do. The amendment is actually perfectly tailored to the situation of the person who can't hire a lawyer or afford a lawyer. That is who we are talking about. We are talking about people who certainly are not sophisticated enough or able to game the bankruptcy system. They are not in that category at all. They are people who simply want to stay in their apart-

ment. They have financial problems, but once they file for bankruptcy, they want to be able to start paying that rent again.

Let me read what Mr. Sommer said. He is not a person who works on bankruptcy. He is a distinguished author on bankruptcy law. He wrote to me:

To the extent there are abuses in the current system, your amendment will provide prompt and efficient relief by giving landlords a streamlined procedure that could be pursued quickly and without an attorney.

Let me reiterate that. So much of the argument of the Senator from Alabama is premised on the idea that this is somehow a sweet deal for lawyers. What this expert says is that these provisions allow this kind of opportunity for a person who needs it without an attorney. He writes:

Your amendment would make it impossible to obtain any significant delay simply by filing a bankruptcy petition, as can occur today.

This expert makes it very clear that this is a significant improvement over current bankruptcy law, of which the Senator from Alabama is critical. Even with my amendment, he says it is almost impossible to obtain any significant delay simply by filing a bankruptcy petition. He concedes that some of that could happen today, as the Senator from Alabama has pointed out.

Here is the last line, the critical piece that the Senator from Alabama simply won't address, when it comes to one of the purposes of Federal bankruptcy law. Mr. Sommer says:

But it would not hurt the innocent family, struggling to get its finances together, that is able to begin making rent payments and cure its rent default.

That is all I am trying to do, to get some balance here so that an innocent family that is trying to get its act together and finances together doesn't get booted out of its apartment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the statements of the distinguished Senator from Wisconsin. I will offer for the record three advertisements that are not particularly unusual. One I read from earlier, how they can stop the sheriff and get you more time. Call us if you lost in court. Don't give up. Call us. We will give you more time.

In other words, if you have had your eviction proceedings that every other citizen gets, come down and file bankruptcy and we can get you more time, even though we can wipe out all your debts. A person can then begin to find another place to live, he has no other debt, no old debts to pay. He can afford to make the rent payments, and maybe a landlord will let him stay.

Here is another advertisement, from Los Angeles: Stop this eviction, from 1 to 6 months. I know under the Senator's amendment it might not take quite as long. He would cut that time down. But he said from 1 to 6. But

under his amendment I just went through, wouldn't the Senator agree, it is at least a month to 6 weeks?

Mr. FEINGOLD. Mr. President, I ask the Senator, didn't we come to the conclusion that we are talking 6 weeks and not 6 months? Would the Senator concede that is a big difference, 6 weeks versus 6 months?

Mr. SESSIONS. Not if you depend on the rent every month, as many people do who rent out their garage.

Mr. FEINGOLD. Isn't there a substantial difference between 6 weeks and 6 months of rent? I would say that is significant.

Mr. SESSIONS. It is significant if you don't get rent for 2 months or 1 month or 6 months, if you need it.

The Senator suggests these people are not trying to game the system. They are not sophisticated in all of this. They go to lawyers. They take advertisements like this. Those advertisements will still be there. They tell tenants how to do this. They are shocked when the lawyer says, don't pay any more on your credit card. Don't pay any more at the bank. Don't pay any more of your debts. Take your next paycheck, give it to me, and I will wipe out everything you owe.

I ask unanimous consent to have printed in the RECORD these three documents.

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

#### 7 MONTHS FREE RENT

#### 100% GUARANTEED IN WRITING

No matter how far you are behind in your rent. We guarantee you can stay in your apt. or house for 2-7 months more without paying a penny!!! Find out how. We can stop the Sheriff or Marshall and get you more time. If the Sheriff or Marshall has been to your home, don't panic CALL US! If you lost in court don't give up. Call us and we'll get you more time.

Call Now (213) \* \* \* All counties (Orange, Riverside, San Bernardino, Ventura, etc.) are open 24 hours. Call us and we'll give you our toll-free number (800 \* \* \*). If all lines are busy please call (213) \* \* \* for the location nearest you.

#### TENANT ORGANIZATION, INC.

Dear Tenant, As you know your landlord has filed for your eviction. Chances are you'll have to move! How long until you are forced to move depends on you.

The TENANT ORGANIZATION can legally stop your eviction for up to 120 days at rock bottom prices. ALL WITHOUT HAVING TO PAY RENT OR APPEAR IN COURT!

We are not a foundation or a National bureau we are the only TENANT ORGANIZATION in Southern California. Our prices are the lowest with the best service and quality you can find. For example we will prepare and file a Chapter 7 or 13 Bankruptcy Petition for only \$120. This is a Federal Restraining Order that will delay your eviction for an average of 2 months. That is not all! We have more moves when it comes to prolonging your eviction. more moves than MAGIC JOHNSON!

#### REMEMBER THE TENANT ORGANIZATION CAN HELP YOU EVEN IF:

You have lost in Court.  
Attorneys or even Judges order you to move.

Legal Aid can't help you and says you must move.

Your situation seems hopeless, JUST CALL!

A very urgent warning! Beware of strangers showing up at your front door unexpected and uninvited offering a legal service for your money. Usually these con men and rip off artists will claim to be attorneys or sent by the court. If you are approached by any of these people report them to your local police department. Don't become their next victim!

#### QUALITY

#### NEED MORE TIME TO MOVE?

Public records indicate that you are being SUED in the Los Angeles Municipal Court as a party to an Unlawful Detainer Action.

California Law requires that you file an ANSWER to the Complaint Within 5 Days of being served by the Landlord or be forcibly evicted from the premises that you now occupy. For as little as \$20.00 you can begin to:

#### STOP THIS EVICTION FROM 1 TO 6 MONTHS

Whether you appear in the Municipal Court or not, there are Federal Laws which will assist you in your efforts to stop this eviction. A Federal Court Restraining Order, which is automatic upon filing, will immediately stop the Municipal Court, all Marshall's or Sheriff's from continuing this eviction.

Prompt Action in this Matter is Necessary Failure to respond to this most urgent matter may result in your Immediate Eviction.

For Assistance in filing your answer or obtaining an Automatic Restraining Order Call 24 hr. 7 days a week

Mr. SESSIONS. One of the things Senator GRASSLEY has done in the bill, and the Senator has mentioned, is to provide that you do not have to have an attorney in bankruptcy court for most of the actions that will take place. This is indeed a good step forward. You would not have to have an attorney in this landlord tenant situation. I would suggest that for the average small apartment owner who gets a notice that he is to stay his eviction procedures, and he has a lawyer who is doing the eviction procedures, he is going to ask his lawyer: What is this? What can you do to get this stay lifted? The landlord is going to hire a lawyer and end up spending several hundred dollars to get this matter taken care of, when ultimately, the procedure is such that there will be no legal basis for the filing of the complaint in the overwhelming number of cases.

I understand the Senator's concern. I believe this bill, as written, will provide all the protections the States have given to tenants. I believe we have a responsibility to see they have protections, that they can defend their interests in court before being thrown out of their apartments.

And, indeed, that is the law in every State in America today. But I do not believe we ought to allow those who file bankruptcy to have substantial benefits over those who don't file bankruptcy, who are managing somehow, in some way, on the same income, to pay their debts. I don't believe they should have a superior advantage. I don't believe landlords who are going to lose in this bankruptcy proceeding, no telling

how many months rent, should be required to fund additional rents. If this body wants to pay them to allow people to stay, it is OK; otherwise, it is not.

I yield the floor.

#### SATELLITE TELEVISION SERVICE

Mrs. LINCOLN. Mr. President, I rise today on behalf of the 570,000 satellite viewers in the State of Arkansas who would like to watch local news broadcasts over their satellite dishes. Since I began serving in the Senate in January, I have received more phone calls, letters, and postcards regarding satellite television service than about Federal spending, crime, health care, or many of the other important issues we have debated this year.

Many constituents complained to me earlier this year after they lost some of their network signals due to a court order. Others have been worried they will lose part of their service by December 31. I have kept all of these constituents informed about developments with the bill that would let them keep their full satellite service.

When we passed the bill—which most people refer to as the Satellite Home Viewer Act—by unanimous consent in May, I told my constituents their problems would soon be resolved. Then, as the summer days got shorter and the leaves began to fall, I told them to just be patient. I said, "It will be just a few more weeks," because members of the conference committee had begun to meet.

Now, as we rush to conclude the legislative session, my constituents, and millions of others across the country, are still waiting. I now share their anger with what they perceive as Washington interfering with their access to information and entertainment. I have been told there is only one Senator who is holding up the process of passing a bill that would permit satellite viewers to receive local network signals over their satellite dishes. This is especially frustrating considering the House of Representatives has overwhelmingly approved a bill by a vote of 411-8.

In my opinion, it is so unreal that those who stand in the way of this legislation would think that as we rush to finish the important task of funding the Federal Government, they can kill this bill in the 11th hour and no one will notice. I am here to bear witness that people will notice. As many as 50 million people will notice because that is how many people risk losing part of their satellite service if we do not complete action on the satellite bill before the end of this session.

The satellite TV conference report is the product of hard-fought and very extensive negotiation among conferees. The provision that one Senator has expressed concerns about is especially important for residents of rural States. The local broadcast signal provision in the satellite bill would create a loan